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CASELL'S FAMILY LAWYER





THE LORD CHIEF JUSTICE OF ENGLAND (LORD ALVERSTONE)

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CASELL'S
FAMILY LAWYER

BEING

*A POPULAR EXPOSITION OF THE CIVIL LAW OF
'GREAT BRITAIN*

BY

A BARRISTER-AT-LAW

Special Edition

WITH FULL-PAGE FRONTIS AND FACSIMILES OF LEGAL DOCUMENTS

VOL. III.

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CONTENTS.

An Introduction to the Third Volume PAGE 1129

Book VII.

THE LAW RELATING TO THE SALE OF FOOD AND DRUGS

CHAPTER I.

UNDER THE SALE OF FOOD AND DRUGS ACTS.

SECTION I.—INTRODUCTORY, BUT IMPORTANT.

The Statutes—Their objects—Prevention of cheating—Preservation of health—Offences generally described—Science and adulteration—The miller of the Middle Ages—The “daftie,” and the miller—Scott and the miller—Remedy at Common Law of customer for short weight—Inadequacy—Proof of knowledge of adulteration—Duty not to sell unwholesome food—When you sell food, do you warrant it fit to be eaten?—The “common cheat”—Alum and bread in 1814 1133

SECTION II.—THE GENERAL LAW UNDER THE FOOD AND DRUGS ACTS.

Definitions—Food—Condiments—Baking-powder—“Chewing gum” case—Drugs—Arsenical soap—Beeswax—Camphorated oil—Article sometimes a drug, sometimes not—Adulteration, what is—Four kinds of adulteration—**SELLING GOODS NOT OF THE NATURE, SUBSTANCE, AND QUALITY DEMANDED**—Most usual offence—The section of the Act—What is a sale?—The psychological moment—Importance of time of declaration of mixture—How to keep yourself safe—Who is the seller?—Master and servant—Servant liable if actual seller—Master also liable for sale by servant—Tricks of milkmen—Assistant adulterating for his own profit—You may be liable for adulteration by strangers not servants—Water added to milk on the railway—Moral innocence no defence—But may make a difference in the penalty—Sale must be to prejudice of purchaser—What is prejudice?—No offence if purchaser knows what he is getting—How to protect yourself without a label—What was article sold as?—Who is the purchaser?—What is nature, substance, and quality?—“And” means “or”—Fixed standards for foods—*Pharmacopœia* standard for drugs—Tincture of opium means “commercial opium”—Mercury ointment—Salt in beer—Arsenic in beer—Selling something entirely different from article demanded but genuine of its kind—Preservatives—Must not be injurious to health—Boracic acid—Glacialin—Formalin—Proprietary medicines—Adulteration creeping in unavoidably—Pepper—Caper tea—Buttermilk—**COMPOUND ARTICLES OF FOOD AND COMPOUNDED DRUGS**—Offence to put in wrong ingredients—Or to omit ingredients asked for—Prescriptions—Receipts—Frivolous complaints—**ABSTRACTING PART OF THE GOODNESS OF FOOD**—Person who abstracts liable—Also person who sells—Milk usually affected—Servants, how liable—Abstraction only punishable if deleterious—Cocoa, extraction of oil—Ginger—Caraways—Moral innocence no defence—**MIXING INJURIOUS INGREDIENTS**—Meaning of “mix”—Sulphur in hops—Baking-powder—Copper in peas—Knowledge of adulteration—Negligence—Penalty—How the Acts are administered—The way to cross-examine an expert—Difference between prosecutions under different sections—**COMMON SUBJECTS OF ADULTERATION**—Butter—Adding fat—Adding water or milk—Irish butter—Salt—Cheese—Lard added—Artificial colouring—Canned foods—Pickles—Mustard—When should be sold as mustard condiment—Pepper—Lard adulterated with beef-fat—What is “necessary for production” as an article of commerce?—Spirits may be mixed with some water—**MINOR OFFENCES**—Refusal to sell sample to be tested—What is the offence—Reasonable price to be paid by officer—Officer cannot make you break open tin or packet—Tin or packet must be duly labelled—What is duly labelled?—Article must be exposed for sale, or on sale by retail, in a shop or premises or street or public place—Obstructing an officer—How offence omitted—Corrupting an officer—Government Departments may now intervene—Future offences—Orders in Council 1140

SECTION III.—DEFENCES.

DEFENCE OF WRITTEN WARRANTY—Best defence—Innocent retailer—The one way provided by the statute—The rule a hard-and-fast one—Black and white—Section 25—Three things to be proved—Bought with written warranty—What is a written warranty?—Warranty—What is enough?—The cases decided—Not very uniform—Express individual representation—Forming part of the contract—Mere words do not matter—Invoice not a warranty—By Sale of Goods Act implied warranty—No help—The reason—Something on the invoice may be a warranty—Delicious butter!—Invoice a good defence in margarine prosecution—Label on the goods not a warranty—Mark on the goods not a warranty—The law epitomised—Case of Willson's lard—You can have a running warranty—Usually in milk cases—To what offences this defence does not apply—Abstraction—Servant may rely on master's warranty—Difference where warranty given by a foreigner—Reasonable steps to be taken by retailer—**DEFENCE OF LABELS AND NOTICES**—Virtue of a notice in the shop—Safety in a label—Label to be plain and legible—Label no protection where actual fraud—Seller liable, no matter who makes adulteration—Retailer ought to know what he sells—Protection without a label—Diluted spirits—Spirits sold as "mixed"—Why label safer than notice—**DEFENCES AS TO FORM**—Inspector not tendering money—Importance of noticing what inspector says—Time for commencing proceedings—**INSUFFICIENT DEFENCES**—Sold as received from manufacturer—Personal innocence—"My servant did it" 1189

SECTION IV.—THE WHOLESALE MERCHANT AND THE RETAILER.

Time limit hinders prosecution of merchant—Prosecution for giving false warranty—In district where goods bought for analysis—Where the merchant has the pull—How he can defend himself—Charge of giving a false warranty—Difficulty in getting samples from wholesale house—Inspector cannot make you break a tin or packet—Forging a warranty—Palming off a warranty—Time limit—**CIVIL REMEDIES AGAINST WHOLESALE MERCHANTS**—Breach of warranty—Warranty need not be written for this purpose—What damages recoverable—The course to adopt—The merchant's defences herein—Costs—You must have sold without alteration—A SUGGESTION 1209

SECTION V.—THE COURSE OF PROCEEDINGS UNDER THE FOOD AND DRUGS ACTS
(INCLUDING THE MARGARINE ACTS).

Who may enforce the Adulteration Acts—Person purchasing for test purposes—Who may act for local authority—Inspector may employ servant or agent to purchase—The reason why—The boy messenger—How the purchase must be made—Inspector, etc., not obliged to show his authority—A sample from a special bottle—The inspector who knew what good rum was—How the publican could have escaped—Difference between public officer and private informer—The Butter Association—Refusing to sell—The virtue of chosen language—What is "forthwith"?—A matter of days?—Minutes?—The bottle of gin between two—A nice point—Tampering with the sample—Dividing the sample then and there—**SAMPLES TAKEN IN COURSE OF DELIVERY**—How different from the former case—Applies to all food articles—Formalities not necessary—The Coventry farmer—The Glasgow case—No private person can take a sample in this way—**THE ANALYSIS**—Sample to be analysed though guilt admitted—Only public analyst of district can do it—Who is that personage?—**THE COURT PROCEEDINGS**—When and how they begin—What to do after the summons is served—Depends on the plight you are in—Four states of the case—Get your sample analysed—By whom—Send copy of certificate to prosecutor—The uncertainty of some analyses—How to take the benefit of a written warranty—Notices you must give—When to give them—The warranty itself not enough—Your evidence—Certificate of public analyst not conclusive if contradicted—The Court may have a Government analysis made—And must if you ask them—A sample of scientific evidence—Bothering the magistrates—Government analyst's certificate not conclusive, but of great weight—Proper form of public analyst's certificate—His opinion not enough without facts—Bad certificate kills the prosecution—**PRIVATE PURCHASER PROSECUTING**—No formal purchase required—No limit of time for commencing proceedings—No necessity for analyst's certificate—The Louth Guardians and the paupers' butter—Private prosecutor may prove his case anyhow—**PAINS AND PENALTIES**—Fine generally varies according to number of offences—Costs—Exceptions to the general rule—Appeals—When the defendant has an advantage 1225

CHAPTER II.

FOOD SPECIALLY LEGISLATED FOR.

SECTION I.—BUTTER, CHEESE, MARGARINE, AND MARGARINE-CHEESE.

Substitutes for butter—What is butter?—Made from milk or cream—What is cheese?—All imitations of butter to be called margarine—Must be labelled when exposed for sale—Must be wrapped in paper labelled "Margarine"—Must outside wrapper be marked?—How margarine may be advertised—Meaning of "exposed for sale"—In view of customers—

Dealers in margarine—Importers—Liability of importers—Packages imported to be conspicuously marked—Consignment note—Samples taken in transit—Factories to be registered—Wholesale dealer to register consignments—How packages to be marked—PROCEDURE—Taking of a sample—Margarine labelled to be purchased—Butter not—Application to cheese—DEFENCE of warranty or invoice—How to raise the defence—Notices to be given—To be given in time—When your shopman is at fault—Penalties—Acts do not apply to keepers of refreshment rooms—Pearce's case—Why the Acts do not apply . . . 1249

SECTION II.—MILK.

Name and address on cart—Or pails—A fine point—WHETHER milk sold from cart or pail—Name to be conspicuous—Is trade name sufficient?—Samples in course of delivery—No request or consent—Every can a separate offence—Skimmed and machine-skimmed milk—When sold condensed—Label on tin—Running warranties relating to milk—Case of importance to the milk trade—The Government standard for milk—The effect thereof—Raising a presumption—Milk should be stirred—Otherwise risk of conviction for "abstraction"—Notice to the purchaser—Spiers & Pond's case—Danger of mixing two lots of milk—Preservatives in milk—Powder to be dissolved before mixing—Importation of condensed milk—Adulterated or impoverished milk—Milk delivered in several cans—Whole up to standard, but some cans deficient—How to avoid prosecution . . . 1266

SECTION III.—TEA AND COFFEE.

Coffee Act, 1718—Weight-making materials added to coffee—Tea and coffee Act, 1724—Does not touch chicory—Mixing tea with drugs—"Faked" leaves—How the law was evaded—Dyed leaves from China—Exhausted tea—Tea mixed with foreign substances . . . 1281

SECTION IV.—BREAD.

"Corrupt victual"—Bread and ale—The Bread Act—Lawful ingredients of bread—Alum in bread—Master liable—Servant also—Bread to be marked—Obstructing a search—The Sabbatarian butcher—Who may prosecute—Common informer to have half penalty—Servant to blame—How master may escape . . . 1284

CHAPTER III.

THE SALE AND SEIZURE OF UNSOUND FOOD.

Sanitary Districts—IN ENGLAND—Urban and Rural—Rural with urban powers—IN SCOTLAND—Burghs—Districts outside burghs—Veterinary surgeon to assist in Scotland—Also Police Force by searching—Animals and food to be examined—Power of officer to enter premises—Power in Scotland to search carts, etc.—WHAT MAY BE SEIZED—In England (except London)—Thirteen articles—In some districts all articles—London and Scotland—Must be intended for human consumption—Obstructing officer—Not assisting is not obstructing—Local bye-laws—The smell of cheese—WHEN MAY FOOD BE SEIZED?—Exposed for sale—Deposited for sale—Deposited for preparation for sale—Intended for food of man—In course of transmission (Scotland)—Meaning of "exposed for sale"—Meaning of "deposited in any place"—What is a place?—Case of the Derby butcher—Foodstuffs presumed meant for food—But defendant may prove contrary—Permissible to poison foreigners—PROPER METHOD OF PROCEDURE—Inspection and examination—Seizure—Condemnation by justice—Owner need not be notified—Owner may resist condemnation before magistrate—Magistrate need not hear owner—May if he likes—Time for condemnation—Compensation for wrongful seizure—How to get it—How much—PROSECUTIONS—Conviction not necessary consequence of seizure—Who may be summoned—Guilty in London, not guilty in provinces—Owner at time of exposure for sale—Meaning of "owner"—The man in possession of the stuff—Possession of servant is possession of master—What is not possession—Food seized when not exposed for sale—Pickled beef—Salesman on commission—Law applicable to London—Walnuts case—Liability of wholesaler and retailer—Scotch law between wholesaler and retailer—Power of sanitary officer to break open premises—DEFENCES—Knowledge of condition of food—No defence in England—Notice in shop—Special defence for London—Defence that food was sound though condemned—In Scotland, defender's want of knowledge or defence—Veterinary's certificate on beast or meat—Peculiar Scotch procedure—How certificate to be given—PROCEEDING AND PENALTIES—For obstructing—For the principal offence—Posting up convictions in Scotland and London—How much rottenness in a basket of plums . . . 1292

CHAPTER IV.

CHEMISTS AND DRUGGISTS.

DRUGS—POISONS—PHYSICS.

Who may retail poisons—What is a pharmaceutical chemist—Only qualified persons allowed to take the name—Drug companies—Must employ chemists to sell poisons—Unqualified assistants—

Illegal for them to dispense poisons—Formalities in the sale of poisons—"Poison" means everything containing poisons—Patent medicines—Proprietary medicines—The chlorodyne case—Balsam of aniseed case—Licoricine—Infinitesimal quantities—The result so far as the trader is concerned—Poisons which may only be sold to known persons—Introduction—Register of poisons—Form of—Master liable for servant—Pharmacy Acts do not apply to wholesale transactions—Nor to medicine supplied—Doctor's prescription—If dispensed by qualified chemist—THE SALE OF ARSENIC—Arsenic usually to be coloured—*Poisoned grain*—*Poisoned flesh*—Exception for killing vermin—THE MAKING-UP OF MEDICINES—Anyone can dispense—Except poisons—"Infamous" conduct—*Pharmacopœia* standard 1335

Book VIII.

THE LAW OF WEIGHTS AND MEASURES.

CHAPTER I.

THE LAW AS IT APPLIES GENERALLY.

The old law—Local customs—Weights and Measures Act, 1878—Uniformity established—The standard yard and the standard pound—How the standard gallon arrived at—Apothecaries' and troy weight—Dry and liquid measures of capacity—Heaped measure forbidden—Contracts to be deemed according to Imperial weights and measures—Local and customary weights and measures illegal—Sale by bulk is legal—Having in possession weight or measure not of Board of Trade standard—A $\frac{1}{4}$ -gill measure—What is "for use for trade"—not merely buying and selling—Part of a trade operation—What is a measure—Churn gauged for railway company's convenience—Beer-barrels—False and unjust scales, weights, etc.—"For purpose of trade"—Instances of "false and unjust"—Two railway parcel machines—Scales with shot-balls—Purposes of adjustment—Weighing goods and wrapper together—Legal if properly done—Putting paper on the weight scale—When legal and when not—Machine capable of being used unjustly is unjust—False spring balance—Weights to be cased in brass, iron, or copper—Board of Trade model bye-laws—Wilful fraud in using weights, etc.—Scales with movable pans—Should balance when pans exchanged—Unstamped weights and scales—Local standards—Must be re-tested periodically—County or Borough Council to fix times and places for verifying weights and measures—Inspector bound to stamp correct weights and measures—Must give certificate if requested—No defence that no facilities were afforded—Beer-barrel—Denomination on weights and measures of capacity—No need for re-verifying—Powers of inspectors—To enter premises—May be general—Inspector may demand to see all weighing machines, weights, and measures—on premises or in possession—When master is away, ought servant to produce weights, etc.?—Inspector bound to produce warrant if asked—Fees must be charged by inspector for stamping weights—Convictions may be published—A good DEFENCE—Vessel not used as a measure—Metric system legal—Scale of Inspector's fees 1334

CHAPTER II.

THE LAW OF WEIGHTS AND MEASURES AFFECTING SPECIAL TRADES.

SECTION I.—THE COAL SELLER.

Coal must be sold by weight—May be sold in bulk occasionally—Coal over two hundred-weight—Delivered in vehicle—Cart to be weighed—Coal ticket—What it must contain—"Correct weight"—What the words mean—Difficulties of enforcing Act—Ticket to be delivered to purchaser—May be given to purchaser's servant—Object of ticket—Ticket may be sent in advance, or with first cart—Not after coal delivered—Procedure where several cart-loads or more than one delivery—Time and place for filling-in Ticket—Charged with wrong offence—Coal sent in sacks—Weight in each sack need not be stated—Sacks need not be all alike—A dilemma—Ticket to be signed—Trade name or real name—"Co-operative Coal Co."—The fine for not delivering ticket—Servant also liable—Dishonest carters—Coal—Vehicle to be weighed on demand—Who may demand it—Expensive suspicions—Shops where coal sold and delivered must keep proper weighing machines—Sales of two hundredweight or less—Local authorities to make bye-laws—Must be reasonable—A bad bye-law—A good bye-law—Weighing machine with cart—Inspector's right to enter premises—To stop coal carts—To weigh coal—Representation of weight of coal—Liability of master for servant's representation—*Sample of weight ticket*—SCOTS LAW—in burghs—Account or memo. to be sent with coal—Contents thereof—Re-weighing coal—Request of constable or purchaser—Less than half a ton—When bound to keep weighing machine—Coal-hawkers—LONDON—London Coal Act—Coal to be delivered in sacks—Re-weighing—Course of procedure—Small quantities to be weighed 1338

SECTION II.—BREAD.

The Bread Acts—All bread to be sold by weight—Compulsory—Not by description—Not enough to weigh the dough—Must weigh bread after baking—Not in customer's presence—Must have scales in shop—Must weigh in customer's presence if asked—False scales—Baker selling from a cart—Must carry scales—Sending bread round to customer—Differences—SCOTTISH BURGHS—Weight to be stamped on each loaf—Powers of police—4-lb. packet—Paper included—Whether lawful or not—Fancy or French bread—May be sold by description—What is fancy or French bread?—Is it a difference of material?—Or mode of baking?—Or shape?—The A.B.C. case—Bread may be "fancy" at one period and not at another 1374

SECTION III.—LICENSED VICTUALLERS.

Intoxicating liquors to be sold by measure—Measure to be marked—In England, to be sold in a marked measure—Welsh "blues" illegal—Less than half a pint need not be measured—Sale by "glass"—Penalties—The landlord's wife—SCOTS LAW more precise—Liquor to be sold by measure—Penalties—May sell whiskey by the sixpennyworth, etc., without measure . 1381

SECTION IV.—MISCELLANEOUS TRADERS.

Millers to keep weights and scales—All brewers for sale—For convenience of Excise officers—Heavy penalties—Excise traders—Distillers, etc.—For revenue purposes—Heavy penalties for fraudulent devices—Hop dealers—Hop growers—Proportion of bag to hops—Bags and "pockets" to be marked with weight—Time for marking—Size of mark—Market keepers—Goods sold in market to be weighed if required—Carts to be weighed—Markets and fairs for sale of cattle—Accommodation for weighing—Machines and weights to be periodically tested—Weight tickets 1334

Book IX.

THE LAW OF TRADERS RESTRICTED BY LAW.

PART I.—SELLERS OF INTOXICANTS.

CHAPTER I.

LICENCES AND LICENCE-HOLDERS.

ENGLAND—History of the law—Kinds of licences—No person to sell without a licence—Licence restricted to certain premises—Penalties for illicit sales—What sales illicit—Selling on unlicensed premises—Clubs—Bogus clubs—Committee not responsible if steward acts contrary to orders—Death of licence-holder—Business carried on by his executors, etc.—Bankruptcy of licence-holder—Beer-dealer having off-licence—Agents of beer-dealers—When is a sale on licensed premises?—An august shebeen—Servants not liable—Enlargement of licensed premises—No new licence if premises substantially the same—EXCISE LICENCE always necessary—When no justices' licence needed—Dealer's off-licence—Beer-dealer's additional licence—Dealer's foreign wine-licence—Sweet-dealer's licence—Spirit-dealer's licence—What are spirits?—Spirit-dealer's additional licence—Liqueur licence—Druggist's licence—JUSTICES' LICENCES—Alehouse or full licence—To whom grantable—What is an inn?—Beer on-licence—Applicant must reside on premises—But need not own the business—Beer off-licence—Cider and perry—Sale of wines—Refreshment-house licence—House of public resort and entertainment—Sweets licence for refreshment-house—PREMISES AND PERSONS—Qualifications—Value—Differs in towns and rural places—Old premises—New premises different—No value for "old" alehouse—Other licensed premises with no valuation qualification—Disqualification by repeated offences—Protection of owner of premises—Owner may have disqualification removed—Personal disqualification—Sheriff's officer—Convicted felon—Person convicted for selling spirits illegally—Person twice convicted—Minor kinds of licences—Six-day and early-closing—How granted—Only inn-keeper bound to keep open—Sunday closing voluntary—But may be compelled indirectly—Trying to break down the law—What is Early-Closing Licence?—What is a licence?—Why publican not bound to keep open—Occasional licences—A difference in favour of fully-licensed alehouse keeper—Packet-boats—Scotch boats, no sale on Sunday—Canteen licences—Drink licences for music-halls and theatres—Music and dancing licences—Chaotic state of the law—Premises not requiring to be licensed for music, etc.—How applied for in the country—How in London—How in Middlesex—Billiard licences—SCOTS LICENSING LAW—Three kinds of retail licences—Inns and hotels—What are—Accommodation for sleeping—Sub-divisions of licences—Public-house licence—No sales during prohibited hours—Dealer's and grocer's licence—An off-licence—

Gratuitous "treat"—Occasional licence—To whom to apply—Local regulations—Notice to the police—Early closing—Early-closing licences—Alteration of hours—Sale in boats and vessels—During fair time—Shebeening—How shebeening proved—Hawking PAGE 1387

CHAPTER II.

NEW LICENCES—RENEWALS—OPPOSITION—TRANSFERS.

PROVISIONAL LICENCES—Premises about to be built—No provisional off-licences—Plans to be prepared—Notices served—Advantages of provisional licences—Discretion of justices as to renewal—How to apply—First licence—Then confirmation—Conditions—Built according to plans—Means "substantially" so built—The final order—No time limit—**NEW LICENCES** for existing premises—How to apply—Times of Licensing Sessions—Notice thereof—In church doors—Adjourned meetings—Notices to be given—To overseers—To superintendent of police—How to give notices—Contents of notices—A sufficient form—Notice to be advertised—And affixed to the door of the house—And of the parish church—For two Sundays—You cannot be heard if notices not given—How a bad notice may be cured—Calculation of time—How to count twenty-one days—The public right to object—Without notice—Three kinds of opposition—Publicans—Teetotalers—Property owners—**THE JUSTICES' DISCRETION**—Is absolute—Exceptions—Where licence can only be refused on four grounds: (1) Character of applicant—What is evidence of character; (2) Disorderly character of house; (3) Previous conviction or forfeiture; (4) House or applicant not duly qualified—Value—Meaning of "duly qualified"—No confirmation for off-licences—**OTHER NEW LICENCES MUST BE CONFIRMED**—By whom—Their powers—Opposition by whom—**RENEWAL OF LICENCES**—Must be had annually—Discretion—When limited to the four grounds—1869 wine and beer licences—Justices must give reasons for refusal—Sometimes give reasons in writing—Forfeitures—In most cases, justices have absolute discretion—How discretion to be exercised—"Wants of the neighbourhood"—**NOTICE OF OBJECTION**—Must state grounds of objection—Licence-holder not bound to attend—Unless summoned by justices—Justices starting objection—Evidence of objection on oath—Procedure when objection raised—Refusal to renew—No reason need be given—"Needs of the neighbourhood" objection—How to meet it—Question of supply and demand—**LAW OF SCOTLAND**—New licences—Similar to English—Application in special form—Questions to be answered—Accurate answers—Consequences of inaccuracy—Suitability of premises—Certificate—Good character—Certificate thereof—Time is important in applying—Public notice—Objections—Who may object—Confirmation—Opposition may call evidence—**RENEWAL**—How to apply for—Objections to—New kind of licence is a new licence—**APPEALS**—In Scotland—In England—To Quarter Sessions—**TRANSFER AND REMOVAL** of licences 1427

CHAPTER III.

THE CONDUCT OF LICENSED PREMISES.

Name to be put up—Description of licence—How liquor may be sold without a licence—Selling liquor not licensed to sell—Off-licence holder evading conditions—Drinking in adjacent highways—Drinking in adjacent premises—Privy or consent—Sale to a messenger—Sending out liquor—Sufficient proof of sale—Unlicensed restaurant—Communication between licensed and unlicensed premises—Not necessarily buildings—Temporary communication—No new door to be opened—Illicitly storing liquor—Whiskey in a beer-house—The risk of it—Spirits in a wine-house—Permitting drunkenness—Riotous conduct—The "chucker-out"—Knowledge that drunken person is there—Selling liquor to drunken person—Ignorance no defence—Publican not bound to serve anyone—Responsibility for manager or servant—Varies according to the servant's employment—General instructions to servants no defence—Manager not like other servants—Drunk and sober men entering together—Sale to sober man for drunken man's consumption—Mitigation of punishment—Resort of prostitutes—Guilty knowledge essential—Entitled to refreshments—Using house as brothel—Harbouring reputed thieves—The dangers of a "friendly lead"—Harbouring constables on duty—Supplying constables on duty—The armet case—Reasonable precautions—Permitting gaming on premises—Gaming means playing for money—The publican's private friends—A warning—Unlawful games—What is a game of skill?—Contravening the Betting Act—Paying bets on premises no offence—Receiving money is an offence—And receiving betting slips—One bet does not make a betting-house—Two bets may—A case from Kensington—Prohibited hours—Time means Greenwich time—The punctual judge—Different hours of closing in different places—The Metropolitan district—Towns and populous places—Rural districts—Except in London magistrates may make variations for Sunday—Welsh Sunday closing—Night houses—Off-licensed grocers—No need to close whole of shop—Sufficient to close part where liquor is—Three offences during prohibited hours—The landlord's friends—Staying to finish a drink—The jolly farmers—Importance of a locked door—The *bonâ fide* traveller—Can demand refreshments at any time—Only where house has on-licence—Liquor to be consumed on the premises—What is a *bonâ fide* traveller?—A popular misconception—Man travelling for drink is not a *bonâ fide* traveller—The Northampton case—Publican to take precautions—A traveller by railway—Entitled to be served at railway

stations—Welsh cases—A distinction and a difference—Evasion will not be tolerated—Lodgers may be served at any time—Also private friends—A friend is someone not a customer—Refreshment houses—Time of closing—Welsh Sunday Closing Act does not apply—Sale of liquor to young people—Sale of spirits to child under sixteen—Apparent age to be taken—How to prove age—Persons under the age of fourteen—Liquor not to be sold to—Except a reputed pint in a corked and sealed vessel—Knowledge to be proved—Power of the police to enter licensed house—Not entitled to enter private room—Except on reasonable suspicion—Friendly society's room—A check to curiosity—A reasonable time—Constable may only enter where house licensed by justices—Search warrants—Shebeening by wine-house keeper—Licensed refreshment-house keepers—Payment of wages in public-houses—Billeting of soldiers—Publican entitled to keep order—To eject disturber—Difference between an inn and a public-house—Inn-keeper must supply travellers—Except for good reason—Ordinary publican need never serve anybody—Endorsing convictions on the licence—Record of convictions in register—Three endorsements forfeit the licence—Disqualifications where licence forfeited—Disqualification of premises—Two ways of disqualifying premises—Four convictions within five years—Two forfeitures within two years—Offences five years old do not count—Except for disqualification of premises or person—Appeals against endorsements—SCOTTISH LAW—Sale of liquor to children—Harbouring a constable—Provision sellers—Forms of Scottish certificates—Three kinds of inns and hotels—For public-houses—For grocers and provision dealers—Breaches of certificate—Fraudulent adulteration—Applies to food as well as drink—Sale of uncooked provisions by on-licence-holders—Knowingly permitting breach of the peace—Actual guilt essential—Allowing persons of bad fame to assemble—The meaning of "notorious"—Landlord need not know—Does the object of the meeting make any difference?—Must the meeting be by appointment?—Allowing boys and girls to assemble—Children apparently under fourteen—Landlord to make inquiries—Taking goods as security for drink—Allowing unlawful games—No unlawful games in Scotland—Playing for money not an unlawful game—Maintaining good order and rule—The Betting Acts—Prohibited hours—Keeping open house—Not merely having door open—Unless for sale of liquor—Men coming out after closing time—Giving out liquors—A nip to keep out the cold—Sampling whiskey on grocer's premises—A friendly gift—Gift to a customer's friend—Grocer and publican must not serve lodgers—Hotel-keeper may serve travellers and lodgers at any time—What is a traveller?—Railway servant—When does a traveller cease to be a traveller?—Sufficient inquiries—Filling a bottle—People lodging in the house—And their friends—When is the licence-holder responsible for his servants?—Acts within the scope of employment—The barman and his friends—Janet and her admirer—Charges to be stated definitely—Alternatives insufficient—Magistrates' discretion as to punishment—Must be exercised reasonably—Licence may be forfeited for first conviction—Landlord may eject disorderly persons—Or call a constable—Constable bound to act

1463

PART II.—MISCELLANEOUS TRADERS.

CHAPTER I.

SLAUGHTER-HOUSES AND KNACKERS' YARDS.

Difference between slaughter-house and knacker's yard—Both to be licensed—Why the trades are restricted—No slaughter-house licence in rural district—Borough and District Councils—No new SLAUGHTER-HOUSE to be put up without licence—Buildings already erected—Premises used before 1875—Where rural district receives urban powers—Or becomes urban district—Altering old slaughter-house—How far a new building—Question is how far premises substantially the same—The butcher and the Corporation—Enlargement—Registration of slaughter-houses—Regulations for the government thereof—Bye-laws—Municipal slaughter-houses—Licence not personal—Attaches to the premises—Not to the person—Inspection of slaughter-houses—Seizure of unsound carcasses—KNACKERS' YARDS—To be licensed—Parliamentary language—Licence personal and to the premises—Licence from sanitary authority to erect—This not a "knacker's licence"—Registration in urban districts—What happens when rural district becomes urban—Business may be carried on by widow or executors—How to apply for licence—Certificate of fitness—When licence may be forfeited—Cutting horse's hair—Time for slaughtering—Knacker must not use animals sent to be killed—Must keep register—SCOTLAND—Licence of local authority required—What is "using premises as a slaughter-house"?—Evidence of breach of the law—Application for licences to be advertised—Public may oppose the grant—Without notice—Opposing renewals—With notice—Appeal from refusal to grant licence for old premises—In burghs—Place used for depositing carcasses without a licence—Carrying carcase uncovered—Slaughterer's licence—Bye-laws—Forfeiture of licence

1472

CHAPTER II.

DISEASED ANIMALS AND THE IMPORTATION OF ANIMALS.

What are animals?—Powers of Board of Agriculture to extend operation of Acts—Meaning of "cattle"—Objects of Contagious Diseases (Animals) Acts—Powers of local authorities—

Powers of the London Corporation—When an animal is diseased—Only certain diseases included—List of them—Duty of person in possession of diseased animal—Isolation—Notification—Meaning of isolation—To whom notice to be given—Isolation of infected place—Notice from inspector of infection—Its effect on neighbouring lands and buildings—Cattle plague—All lands within a mile of the disease—Board of Agriculture to be informed immediately—And local authority—The Board to prescribe limits of infected place—The Board may quash the notices—How to act on receipt of notice of infection—The powers of the Board are absolute—An infected area—Difference between “place” and “area”—Animals with cattle plague to be slaughtered—Suspected animals may be slaughtered—What are suspected animals?—Difference between animals in a “place” and an “area”—The public pay for slaughtered animals—Difference where animal diseased or only suspected—The limits of compensation—Diseases other than cattle plague—Government and local inspectors—Pleuro-pneumonia—Foot-and-mouth disease—Where these diseases have existed—Adjacent occupiers—How a place becomes on “infected place”—Local authority to make inquiries—Farms in different districts—Local authority to determine existence of disease—Subject to Board of Agriculture—Fifty-six days’ limit in pleuro-pneumonia—Fourteen to twenty-eight days in foot-and-mouth disease—Movement into and out of infected places and areas—Cattle to be kept out of place infected with pleuro-pneumonia—Cattle not to be moved out of such place—Board of Agriculture may grant licence—Local authority may grant certain licences—But not others—Movement in case of foot-and-mouth disease—Rules apply to all animals—Pleuro-pneumonia rules only apply to cattle—Circle of infection—Notice to be put up on premises—Slaughtering diseased animals—And suspected animals—Cattle killed for pleuro-pneumonia—A discretion in foot-and-mouth cases—Slaughter of animals exposed to infection—No limit—Swine having swine fever—Suspect swine—Discretion of the Board—Difference between diseased and suspected animals—No limit to value of pig—Disposal of the carcase—Proceeds of sale—Animals insured—How compensation may be lost—Misconduct of owner—Moving of swine infected with swine fever—Not without written authority—The duties of pig tenders—Animals reserved for observation—Compensation payable—Animals may be buried in owner’s ground—Animals found diseased in a market—Or in transit—Or in lair—Or in foreign animals wharf—While in slaughter-house—While on common land—While not in possession of the owner—Animals may be seized and kept isolated—Place where found an infected place—Market, etc.—Where diseased animal has been to be disinfected—Diseased or suspected animal not to be exposed for sale—Railway company not to carry diseased or suspected cattle—Applies to all modes of carriage inland—Regulations to prevent contagion spreading—Disinfection of trucks, etc.—Litter, broken fodder, and dung not to be moved—Rules in cases of different diseases—Power of inspector to order detention of pigs—After such notice pig not to be moved—Certain articles to be disinfected—Certain things to be destroyed—Valuation for compensation—Difference in Scotland—Disputing the Board’s value—How arbitrators appointed—The expenses of valuation—Foreign animals—Prevention of importation of disease—Foreign infected countries—What is a country?—Ports of landing—Movements of foreign animals—Special wharves—No animal to be taken out of the wharf alive—Exceptions—Animals for exhibition—Quarantine—Rules for landing foreign animals—Powers of officials—What officials may act—Police and inspectors—Arrest and detention on suspicion—Stopping cattle on the move—Stopping suspected persons—Searching carts, etc.—Obstruction of officer—Inspector’s special powers—Entering land or premises—Entering on suspicion—How the power limited—Must give reasons for entering—In writing—Pains and penalties—Difference of punishment for certain classes of offences—When imprisonment may be awarded 1544

CHAPTER III.

DAIRYMEN, COWKEEPERS, MILK-FARMERS, MILK-SELLERS.

Regulations as to sale of milk—M.O.H. Acts—Inspection of suspected dairy—Report to local authority—Inquiry—Dairyman to be summoned to attend—Prohibition from supplying milk—How the Act works—Penalty—Dairyman to be summoned in his own district—Dairyman obliged to break his contract—Registration of dairies—Not everyone who keeps a cow—Only if he sells milk—Sale in a neighbourly way—Milk used for fattening calves—New dairy or cow-shed—Notice to local authority—Permission to occupy—Local bye-laws—Old buildings occupied before 1883—Certain minimum requirements—Contamination of milk—Milk-seller with infectious disorder—Milk-shop not to be slept in—Notice to disconnect w.c.—Dairymen keeping pigs—Penalty—How far local authority may legislate 1546

CHAPTER IV.

DEALERS IN GAME.

What is “game”?—Licensed dealers—By whom licences granted—Qualifications and disqualifications of applicant—Licence renewable yearly—Name to be up over shop or stall—Must not sell except at such shop or stall—May have separate licences for several shops—Partners only take out one licence for one shop 1551

CHAPTER V.

DEALERS IN OIL.

The sale of petroleum—Dealers to be licensed by local authority—What is meant by petroleum—Includes all mineral oils—And oils made from bituminous substances—Testing point—No petroleum to be kept on unlicensed premises—Except in small quantities—Not more than three gallons—In pint vessels—Heavy penalty per day—Occupier of premises liable—Petroleum may be forfeited—Vessel must be labelled—Label to be conspicuous—And descriptive—Precautions during transit—Inspection of licensed premises—Samples for testing—Testing on licensed premises—Search warrants—Powers as to granting licences—May be perpetual—Or annual—Or renewable—Or conditional—Appeal to the Home Office—How to appeal—Time for appealing—Hawking petroleum—Local bye-laws—General regulations as to hawking—Construction of cart—Kinds of vessels—Master's liability for acts of servants—How master may escape—Powers of the police 1553

CHAPTER VI.

PEDLARS AND HAWKERS.

Difference between the two trades—An old judge's description—Ancient hawker expected to cheat—Grammatically "hawker" means "shouter"—Local bye-laws on crying in the street—The legal distinction between hawker and pedlar—Pedlar goes on foot—A pedlar need not sell goods—Enough if he offers to work in handicraft—Exceptions—Commercial travellers—Book canvassers—Sellers of food—Sellers in markets and fairs—What is a commercial traveller?—Sells to dealers in the commodity—Pedlar must have certificate—Granted by the police—Qualifications—How to take out a certificate—Form of certificate—Certificate strictly personal—Not to be transferred—Nor lent—Procuring certificate by false representation—Appeal against refusal of certificate—How and when to give notice—Form of notice—How to conduct yourself—Certificate to be produced to constable or customer—Or person on whose premises you are found—Must allow copy to be taken—Pedlar without certificate may be arrested by anybody—Pedlar must show his pack to constable—Pedlar resisting police liable to conviction—Forfeiture of certificate—Statutory definition of hawker—Popular mistake—Hawker's licence—Obtainable from Inland Revenue—Preliminary certificate of character—Licence annual—And strictly personal—Cart and shop to bear name and description—Licence not to be parted with—Must be immediately produced if requested—Exemptions from licence—Commercial travellers—People who sell goods of own make—Basket-makers—Hawkers of food and coal—Beware local bye-laws 1558

CHAPTER VII.

PAWNBROKERS.

What is a pawnbroker?—When is a second-hand furniture-dealer a pawnbroker?—Agreement to re-sell—Licences for a year—THE PAWNBROKER AND THE AUTHORITIES—Revenue Licence necessary—Price thereof—Certificate of magistrate first—Or of District Council—IN SCOTLAND magistrates or J.P.s—Exception—No certificate for "old" licence-holders—Or their successors in business—Even in different shop—The important date—A case of succession—An "old" pawnbroker re-entering business—Notices to be given before applying for certificate—To whom—Certificate can only be refused on three grounds—The character of the applicant—How a pawnbroker may lose his licence—GENERAL OBLIGATIONS of pawnbrokers—To keep pledge book—Columns and their contents—When entered up—Name to be up over door—Notices exhibited in shop—Pawnbroker compelled to give a ticket—If customer will not take it, no business to be done—His rate of profit—Receipt if required—Not to take pawn from child or drunken person—Nor purchase a pawn-ticket—Nor lend out one—Nor employ too young assistants—Days of closing—Nor buy articles pledged with him—Except at auction—Nor sell article pledged—Duty to be suspicious—Not to take in unfinished goods from workpeople—His duty to arrest on suspicion—Exonerated even if wrong, provided he acts reasonably—May detain article offered in pawn—What is a reasonable suspicion?—The prodigal rightly suspected—Compensation for trouble—Search for stolen goods—Property unlawfully pawned—Pawnbroker may be ordered to return it to the owner—With or without money—Obligation to attend and produce books in court 1566

Book X.

THE LAW OF PROPERTY OWNERS AND BUILDERS.

CHAPTER I.

BUILDING REGULATIONS AND THE BUILDING LINE.

Where the law to be found—Local Acts of Parliament—Local bye-laws—Where obtainable—Different rules in different districts—Urban districts—Rural districts—Power to make bye-

laws—Erecting buildings contrary to bye-laws—Plans to be submitted—Must be passed if according to bye-laws—A Corporation which tried to keep a neighbourhood “high-class”—Irregular plans must be rejected—Corporation bound to enforce bye-laws—Where plans wrongfully rejected—Two remedies—The better of the two—Plans to be received or rejected within a month—Approval cannot be recalled—A case from Bradford—Another from Pontypool—Local authority using bye-laws wrongfully—What a sanitary authority must do—What a sanitary authority must not do—Upon what points bye-laws may legislate—What are new buildings?—When is re-erection a new building?—Conversion into a dwelling-house—Substantiality of the alterations—SCOTLAND—The five great towns—The burghs—Places outside burghs—Permission from the Dean of Guild for new buildings—For other purposes—Plan of the site—Plan of the building—What the plans must show—What to provide for—Light and ventilation—Common stairs—Height of rooms—Size of windows—When plan to be approved or disapproved—Statutory bye-laws—Districts outside of burghs—What bye-laws may be made—More limited than in burghs—BUILDING LINE—England—Urban districts—How far building may be brought forward—The first house may fix the line—What buildings are adjacent?—Degree of proximity—The Bristol case—No exact rule—Each case depends on circumstances—The front main wall—A house in two streets—Additions to existing buildings—A penalty—Offence continues so long as building exists—The obstinate man from Eastbourne—Two buildings begun at same time—The law in London—Line fixed by architect of L.C.C.—Scotland—Houses may be set back—Or forward—Burgh authorities may compel this—Unightly projections—May be removed—If projections old, compensation to be paid—England—Buildings taken down to be rebuilt—Line of frontage need not be mathematical—Notice to alter line of frontage to be given before building commenced—What is “taking down” a building?—The Richmond case—Even extensive alteration not necessarily rebuilding—Local authority desiring to widen street—Scotland—Improvements in burghs—COMPULSORY PURCHASE OF LAND by public authorities—Course of procedure—Compensation to owner and leaseholder—Meaning of “house” or “building”—Temporary structures—The Scots law—The law in London 1578

CHAPTER II.

LIABILITY IN RESPECT OF STREETS.

Laying out new streets—How new streets arise—Street does not mean highway—Powers of urban authority—To make bye-laws—Level of new street—Width—Construction—Sewerage—Plans and sections to be deposited before new street laid out—Instances of new streets—Rules applying to London—When an old way is to be adapted to new requirements—L.C.C. may refuse to sanction plans on nine grounds—Must give reasons—Local bye-laws in rest of England—SCOTLAND—Local authority fix level and gradient of new street—The time limit—Rules to be observed—Width of new streets—In London—In rest of England—In Scotland—PRIVATE STREETS—Liability of owner to keep in order—In certain cases local authority may sewer, pave, etc., and charge the owner—What the local authority must do first—Objection by the owners—Who may be made to contribute—The six lawful objections—Where street is a common highway—Unreasonableness—In some districts the owners must be asked to make the street—If they refuse, local authority may step in—Expenses are charged on the property—Liability to keep private street in repair—Exception in the case of sewerage—Taking over private streets—The law of SCOTLAND on these subjects—Liability of Scottish proprietors to make footways 1605

CHAPTER III.

PROPERTY-OWNERS AND DRAINS.

Difference between drain and sewer—Different law in different districts—“Drain” generally means one house only—Sometimes means otherwise—“Single private drain”—A legal puzzle—Houses belonging to different owners—When repairable by the property-owner—When by public authority—Open ditch or water-course—Local authority bound to construct sewers—Right to complain to Local Government Board—What sewers are private property?—Agricultural—Crown property—Sewers for private profit—What is profit?—The Minehead case—Drainage of new houses—Houses rebuilt—Urban districts—Rural districts—Scottish burghs—Other places in Scotland—Power of local authority to order alterations—House not drained at all—Leave to connect with sewer—Manufacturers refuse—After drains are connected with sewer—Duty of local authority—Scottish burghs—House with sufficient drains, but unsuitable for locality—Alteration of system—Who must pay?—Power of local authority to open drains—Power to require owner to execute works—What works?—Consequences of disobedience—Drains which are a nuisance—Or injurious to health—London—Scottish burghs—Rural Scotland—Closing drains again—Permission of local surveyor 1623

CHAPTER IV.

PARTY WALLS AND FENCES.

Ordinary party wall—Common ownership—Common owners have right to the whole wall each—One owner cannot prevent other from full use—Ousting the other owner—Is trespass—

CONTENTS.

xv

PAGE

Neither owner may take exclusive possession—May pull down with intent to rebuild—Must rebuild substantially the same—Wall divided into two strips—Each party entitled to part on his own land—Where capable of exact proof—Presumption of common ownership—How rebutted—Where wall not common neither party may pull down—May pull down own half—The danger of using a pickaxe—Where the wall belongs to one owner—Other owner has right to use—Must pay for this right—An instance—Party wall built on two owners' lands—The right to lean—Caution to people about to build—An expensive present—Semi-detached houses—The party wall—Where both houses originally in same ownership—Sale of one house—Mutual rights of support—Pulling down party walls—The right varies according to kind of wall—Where right exists to pull down half—Demolition must not be negligent—Where mutual rights of support—Who repairs party walls?—Difference between right and duty—No one compelled to mend common wall—Wall may be partitioned—The London code. 1639

CHAPTER V.

RUINOUS AND DANGEROUS BUILDINGS. BUILDING PRECAUTIONS. ADVERTISEMENTS ON HOARDINGS.

Urban districts—Building or fixture—Borough surveyor—May take immediate steps to avert danger—Notice to owner or occupier to repair—Must begin in three days—Otherwise summoned—Local authority doing work—Owner pays—Where owner cannot be found—Work to be diligently proceeded with—What does "dangerous" mean?—Dangerous to whom?—To passers-by in the street?—If owner does not pay, land may be taken—Compensation—Sale of material—SCOTTISH BURGHS—Law similar—Except as to joint owners—Procedure—Occupiers may be removed out of such structure—Owner liable for all expenses—PRECAUTIONS DURING BUILDING OPERATIONS—In England—Precautions to be taken—To keep footway or street free as far as possible—Hoardings—Hand-rails—Platforms—Fencing off excavations—Advertisements on hoardings—Leaving building materials about—In Scotland, permission to be asked to set up hoarding 1648

CHAPTER VI.

DEMOLITION OF INSANITARY PROPERTY AND CLEARING INSANITARY AREAS.

Duties of local authorities—Bad neighbourhoods—Representation by medical officer—What representation may be—Areas unfit for habitation—How unfit—When medical officer refuses to act—Power of ratepayers—Right to petition to Local Government Board—Inquiry by the department—Practicability of improvement scheme—Compulsory acquisition of property—Notice to owners—Including lessees—Where name of owner is unknown—Lessees and owners asked to consent—Confirmation of scheme by Local Government Board—Steps in compulsory purchase—The price to be paid to the owner—Fair market value—How estimated—What the local authority need not pay for—Schemes to increase compensation—Overcrowded houses—Rental not basis of value—Houses let for illegal purposes—Rental increased thereby—Inflated value—No compensation—Houses in bad condition—How compensation reduced—Compensation ascertained by arbitration—Notice of time of arbitration—All claims decided at once—Local authority pay expenses of conveyance—Where land is not owned absolutely by one person—Costs of arbitration—Depend on result—Appeals—Strictly limited—DEMOLITION OF SINGLE HOUSES—Injurious to health—Unfit for habitation—Duty of medical officer—Complaints by neighbours—Complaint by Parish Council—Medical officer compelled to inspect—Urban districts—Rural districts—Petition to Government Department—Procedure by local authority—Proceedings for closing the premises—The owner summoned—Closing order by magistrate—Removal expenses of tenant—Allowed by magistrate—Paid by property-owner—Further proceedings—Who is the owner?—Person entitled to the rents—Trustees and guardians—Mortgagees—Lessees—Some lessees not included—Lessee's plan of action—Charging order—Effect of—How to obtain 1654

CHAPTER VII.

OBSTRUCTIVE BUILDINGS AND PRIVATE IMPROVEMENT EXPENSES.

Houses causing unhealthiness—Though not themselves unhealthy—Called "obstructive buildings"—Complaint by neighbours—Medical officer inspects and reports—Local authority acts—Notice to the owner—He may attend and object—He may appeal—Amount of compensation—Something for compulsory demolition—Notice to treat—Local authority must buy land if required—But owner can retain land—Compensation for inconvenience—Deterioration of other property—Liability of adjoining owners—Betterment—Compensation settled by arbitration—PRIVATE IMPROVEMENT EXPENSES—What they are—Small property-owners—List of private improvement expenses—Private improvement rate—What it is—Payable by occupier—Part deducted from rent—Rate may be redeemed—How much—Landlord and tenant—Charge on the premises—What it is—Property changing hands—Person liable—How the charge may be enforced—Dispute as to amount—List of expenses recoverable—A POINT OF LOCAL GOVERNMENT LAW 1666

INDEX 1677

LIST OF PLATES.



THE LORD CHIEF JUSTICE OF ENGLAND, LORD ALVERSTONE	<i>Frontispiece</i>
ORDER FORM WITH WARRANTY SLIP ATTACHED	<i>Facing page</i> 1192
SAFE LABELS FOR GROCERS	1208
AGREEMENT BETWEEN A FARMER AND A BUTCHER	1304
FORM OF APPLICATION FOR ALEHOUSE LICENCE (ON- AND OFF-)	1432
NOTICE OF CLAIM FOR COMPENSATION	1592
AGREEMENT AS TO A PARTY WALL	1640
HOME-MADE AGREEMENT FOR THE SALE OF A BUSINESS	1672

THE FAMILY LAWYER

AN INTRODUCTION TO THE THIRD VOLUME.

IN the first place, I wish to render my acknowledgments to the public. When the FAMILY LAWYER—the original two volumes thereof—was sent out into the world, it was in the nature of an experiment. I had had the idea of it in my head for a long time, but had not carried it into practical effect largely because so many people said that the public would not buy a big law book to read. This forecast has been thrice falsified. For not only had the FAMILY LAWYER a steady sale from the very beginning, but I very soon found that the work had supplied a want long felt in this country. And I was speedily deluged with letters, some of them critical, some contentious; but all showing an appreciation of the book.

I have also received a large number of letters pointing out real or fancied errors; and a still larger number asking for advice. Very funny reading they are, some of them. An impression seems to have seized a great many people that the author of CASSELL'S FAMILY LAWYER was a sort of Every Man's Adviser. Now I beg to inform my readers that, with every desire to be civil, I cannot answer letters asking for advice. I have far too much professional work in hand to give gratuitous counsel's opinions to all the thousands of purchasers of this book.

In the work in its original form I confined myself solely to the Civil Law of Great Britain. I so confined myself chiefly from a desire not to overload the work. To keep the book within a reasonable and readable compass was an object always kept in view. And the result is—so my good friends and publishers tell me—that the public is asking, as Oliver Twist did on a famous occasion, for more.

Especially, I am told, commercial men are hungering for more information. They do not want, of course, the whole Criminal Law of England and Scotland

expounded for their benefit. It would not do them any good to know the law of murder—why it is murder if you shoot at a duck intending to kill and steal it, and, missing it, hit a man and kill him ; and not murder if you shoot at the duck for mischief only, and, missing it, hit a man. They are not concerned with fine distinctions between housebreaking and larceny from a dwelling-house. They would take but a slight interest in the most interesting discussion on the point where it was larceny for a servant to rob his master and where embezzlement.

But there are parts of the Criminal Law in which the commercial world is interested. The commercial world would like to know those parts of the Criminal Law affecting men in their business. A dealer in provisions wants to know the law as it affects the **adulteration of food**. He wants to know what is adulteration. He wants to know what powers the local authorities have over him in this respect. More especially does he want to know at the present moment ; for by recent legislation a new departure has been taken. Formerly the administration of the Adulteration Acts was left to local authorities and private enterprise. Except in the butter trade, private enterprise has done little. Many local authorities were supine. But now the Board of Agriculture can step in and deal with offenders ; so that we are likely to see a very vigorous campaign carried on in the near future. Every shopkeeper wants to know what is the law as to **weights and measures**. Keepers of licensed houses, publicans and grocers and restaurant-keepers, must know all about new **licences**—how to oppose them, how to apply for renewals of old licences, how to appeal from unjust decisions, and so on. Butchers and others like to be sure of their ground when it comes to a question of seizure of **unsound food**. And property owners in town and country are very often puzzled to know what to do in regard to the regulations of their local authorities as to **buildings**, drains, new streets and the like.

At least, I am told by those whose business it is to know that these people want these facts. People come to Messrs. Cassell & Company, and say to them : "Will your barrister-at-law be so good as to extend the field of his labours and instruct me on these points?" Messrs. Cassell & Company being not unwilling, and I nothing loath, an attempt is to be made in this extra volume to impart a lot of useful knowledge to BUSINESS PEOPLE.

The volume is not confined merely to the matters alluded to above. It includes a great many things besides, mostly "by desire." And I beg of an indulgent public one favour. "If you don't see what you want in the window, come inside and ask for it." That is to say, if you don't see what you want at first, look at the index. If it is not there, and you sorrowfully come to the conclusion that on one particular point the book is silent, then send a

line to LA BELLE SAUVAGE pointing out the same. It will be of assistance to me, perhaps, in preparing a fresh edition some day, and I shall be grateful to you. As a certain public entertainer used to say, in telling a story of how he forgot his wife and left her in the waiting-room when he went off in the train, "You can't think of everything, can you?" I do not profess to have thought of everything; or to have anticipated every possible legal conundrum that may arise.

I often have cases submitted to me which I have to solve out of my own head, simply because no law book in the magnificent library of my Inn of Court, consisting of thousands of volumes, gives me any assistance. In such a case I **apply general principles**. That is precisely what I advise you to do. I have no hesitation in saying that the **FAMILY LAWYER** contains all the principles of law applicable to the various subjects of which it purports to treat. The details are merely applications of those principles; and I have had to confine my details to those of most usual occurrence, and those which my experience has convinced me are most likely to be useful to the average man.

In conclusion, I do not intend this to be a *mere* work of reference. It is, that, I hope; but it is intended to be something more. It is intended to be a work to be read, as well as referred to. I am quite sure that readers will find profit in their reading. The context of a sentence or paragraph is generally important; and in merely referring to a continuous book, you very often read a sentence without the context. Guard against this.

And so, with many thanks for the public appreciation of the former part of this my book, with every hope that this volume may prove as useful as the others, I send my work out on its first voyage.

THE AUTHOR.

Book VII.

THE LAW RELATING TO THE SALE OF FOOD AND DRUGS.

CHAPTER I.

UNDER THE SALE OF FOOD AND DRUGS ACTS.

SECTION I.

INTRODUCTORY, BUT IMPORTANT.

The Statutes—Their objects—Prevention of cheating—Preservation of health—Offences generally described—Science and adulteration—The miller of the Middle Ages—The "daftie" and the miller—Scott and the miller—Remedy at Common Law of customer for short weight—Inadequacy—Proof of knowledge of adulteration—Duty not to sell unwholesome food.—When you sell food, do you warrant it fit to be eaten?—The "common cheat"—Alum and bread in 1814.

THE statutes which deal with the sale of food and drugs are of two kinds. They may roughly and readily be described as statutes for the prevention of cheating and statutes for the prevention of poisoning. The evils aimed at are, first, injury to the public's pocket; and, next, injury to the public's health. You must, according to modern notions, protect the health of the community—or, rather, the community is bound to protect the common health by protecting the health of the individual members of the community. You must also allow for the fact that there are fools and ignorant people living in the world; and you must prevent the keener, more knowing, and less scrupulous of their neighbours from taking advantage of them.

And especially must you prevent such folk from being cheated out of their proper food and their proper medicine. A swindle in the matter of either of these two important things is a double swindle. A man who pays for and thinks he is buying a certain kind of food, believes that he will get a certain amount of nourishment for his body in exchange for his money; and if he gets something inferior, something less nourishing, he suffers not only in pocket but in health—or at least in physique. It is argued, therefore, that the common weal necessitates the enforcement of strict laws for the prevention of such frauds. For the physical condition of the lieges is the care and interest of the King, seeing that every man is either a citizen or a potential citizen and every woman the mother, or the potential mother, of a citizen.

The statutes for the prevention of cheating in the sale of food and medicine are the Sale of Food and Drugs Acts. Of these there are three, all of which apply to the whole of the United Kingdom ; and I propose to consider their application.

A convenient way of dealing with them will be, I think, to ask and answer three questions, namely :

- (1) What are the offences under the Acts ?
- (2) What defences are open to a person charged with these offences ?
- (3) What is the course of procedure to be followed in cases under the Acts ?

There are certain articles which have particular Acts of Parliament, or sections of Acts, devoted to them. These are bread, tea, coffee, butter and cheese, margarine and margarine-cheese, and alcoholic drinks. I propose to give these a chapter to themselves, first premising that the present chapter applies to them as well. The special law to which I allude is additional to, and not instead of, the general law of adulteration ; so that provision merchants and milk dealers interested in these articles must study this chapter as well as the other in order to get at the whole of the law on the subject.

THE OFFENCES STRUCK AT BY THE ACTS

are—I. Selling, or preparing for sale, any article of food containing a mixture of something *injurious to the health* of the consumer.

II. Selling food (or a drug) *not of the nature, substance and quality* demanded.

III. Selling a compounded article of food (or compounded drug) *containing ingredients not demanded* by the buyer.

IV. *Abstracting part* of an article of food so as injuriously to affect its nature, substance, or quality, with the *intention of selling* it as altered.

V. *Selling* food, part of which has been abstracted, *without disclosure* of the alteration.

VI. Selling or preparing for sale a drug with something added to it or mixed with it so as to affect the *quality or potency* of the drug.

I have set out these offences in general terms, so as to give you a general idea of the scope of the adulteration laws to begin with. There are certain subsidiary offences—such as obstructing an officer who comes to take samples, not having the owner's name painted on a milk cart, and others like them. There are also offences relating to bread, tea, coffee, margarine, and one or two other articles of food—all of which shall be duly treated of. As I said before, this chapter is one devoted to the law as it affects food and drugs of all sorts.

The adulteration of food and drugs is a matter dealt with entirely by Act of Parliament. The Common Law had something to say to it—something adequate enough to deal with the matter in the days of our forefathers, when very little food was imported and the diet of the people was simple.

I am not saying that the trader of 1400 was either more or less honest than the tradesman of 1900. For one thing, competition was not so keen amongst tradesmen as it is now, prices were not "cut" so much ; because in all towns of any size the butcher, the baker, and almost every other kind of trader

belonged to a Guild. For the most part, he had to belong to one, or was compelled by the City Fathers to shut up his shop. And a Guild-brother who was found to be cutting down prices to the point where profits begin to vanish was dealt with summarily enough by the wardens of the Guild. He was treated, in fact, in much the same way as a blackleg is dealt with by a modern trade union.

For another thing, adulteration could not be carried on so easily by the food purveyor of the long-ago. The science of chemistry was practically non-existent. Clever men had not analysed into their elemental parts all the foodstuffs of the earth. Therefore they had not been able to build up articles on a chemical basis. And such adulteration as there was, was clumsy in the extreme, and required no chemical analysis to discover it. The mixing of bran and sawdust with flour, of sand with sugar, could be detected by anybody.

Indeed, the most usual form of cheating in connection with foodstuffs seems to have been that practised by the miller—the tradesman who figures in so many forms of life in the Middle Ages as the rogue *par excellence*. The miller of those days was generally a monopolist. The great landowners in various parts of the country—I refer to Scotland just as much as to England—always looked to make a profit out of the grinding of their tenants' corn. The way was for the lord of the manor or a barony to authorise somebody to set up a mill within the lordship, and to prohibit all others from establishing a like undertaking within his boundaries; all tenants would then be prohibited from taking their grain to be ground outside the limits of the barony or the manor; and thus the one mill would of necessity enjoy a monopoly.

In consideration of this monopoly, the miller had to pay a heavy rent, or maybe a royalty, to the landowner; and he (the miller) used to "take it out of" his compulsory customers by robbing them of their meal and flour. By this course of conduct the knight of the dusty coat obtained a bad name; and in time a hundred rhymesters satirised him, a hundred wits fired off *bons mots* at his expense. There is a Scottish story of a village "daftie," who was being chaffed in a rough way by a miller. "Weel," said the daftie, "there's some things I ken; and there's ither things I dinna ken." "Tell us yin o' the things ye ken," answered the miller. "I ken that millers aye hae fat pigs." "An' noo for yin o' the things ye dinna ken," the miller went on. The daftie, with his vacantest air, replied, "Weel, I dinna juist ken whase meal it is maks them sae fat."

You all remember, I daresay, how the immortal Sir Walter, in "Ivanhoe," introduces an allusion to the same subject. The faithful Gurth, being beset by Robin Hood's band, is offered the chance of fighting for his purse; and his selected opponent is—the miller. "'Come on, churl, an thou darest,' quoth the robber, 'thou shalt feel the strength of a miller's thumb.' 'If thou be'st a miller,' answered Gurth undauntedly, making his weapon play round his head with equal dexterity, 'thou art doubly a thief, and I, as a true man, bid thee defiance.'"

In short, the miller was to the ancient what the milkman is to the modern wit of a certain order—a subject for jest and gibe and scorn. Who is not familiar with the story of the milkman who, being asked in a dry summer whether he was not likely, in such a drought, to run short of milk, replied, "No,

I have my water laid on from the main"; and other scandalous jokes at the expense of a hard-working, early-rising body of men who are as necessary to their fellows as are any other traders.

The Common Law could only deal with adulterators of food, and with those who gave short weight (1) by prosecution for cheating, and (2) by action for damages brought by the purchaser against the seller.

To deal with the second point first. There is nothing to prevent **an action for damages by the customer** against the shopkeeper who sells him short weight, or an adulterated article, or an article of food containing some ingredient deleterious to health. This, remember, is quite apart from any prosecution by the local or other authorities under the Food and Drugs Acts.

Let me take an instance. I go to a baker's shop and ask for a $2\frac{1}{2}$ lb. loaf, for which I pay $2\frac{1}{2}$ d. I afterwards discover that the loaf only weighs 2 lb. 4 oz. There is no reason—in law—why I should not bring an action to recover damages for the short weight. There is, however, a most excellent reason, apart from legal questions, why I should not take action; and that is because the damages I am entitled to are so small as to make it not worth my while to be at the trouble of an action. I am entitled to one farthing damages, in fact—being the value of the missing four ounces of bread at the rate charged for the loaf. You see,

If $2\frac{1}{2}$ lb. of bread are worth $2\frac{1}{2}$ d.,

Then $2\frac{1}{4}$ lb. of bread are worth $2\frac{1}{4}$ d.

The odd farthing constitutes the monetary loss I have sustained. And in all cases of breach of contract (except breach of promise of marriage) the party aggrieved is never entitled to more than his actual monetary loss.

In the same way, **a person to whom unwholesome food is sold** may have a remedy quite outside the Food and Drugs Acts—a remedy at Common Law. For if the article sold causes illness, the sufferer can bring against the seller of the goods an action for negligence. But he must be prepared to prove negligence on the part of the seller; which of necessity implies that **the seller knew** of the unwholesomeness of the goods supplied.

Take, for example, the case of a man who buys from a provision shop a tin of condensed milk. He puts some of it in his tea, and poisoning sets in. He has the rest of the milk examined, and the analyst reports that it is poisonous—that the tin has been punctured, admitting the air, and then soldered up again. Now the question whether the shopkeeper who sold the milk is liable to pay the customer his doctor's bill, the other expenses of his illness, the money he has lost through being unable to follow his employment, and compensation for pain and suffering, depends on the answer to the question, Was the shopkeeper aware of the character of the milk?

The customer will have a very difficult case to make out; because he must prove that the shopkeeper knew that he was selling stuff contained in tins that had been damaged. And how in the world can he prove it? It is not enough for him to show that the shopkeeper sold bad milk, because it does not follow that the shopkeeper knew it to be bad. And it may well be that the wholesale dealer or the manufacturer is to blame in the matter.

I have heard lawyers of experience advocate a change in the law in this respect. They say it ought to be enough for the injured customer to prove that he has been poisoned by goods bought at the shop in question. Then it should be left to the shopkeeper, if the fault be not on his part, to bring in the man from whom he bought the stuff; and so on until you get at the *fons et origo mali*. I think—though I do not know of any such case—that if the shopkeeper, on being complained to, gave the customer all the necessary information, and the negligence could be traced back to, say, the manufacturer, the customer could, as the law stands, “go for” the manufacturer.

True, he did not buy the milk from him, and so there is no contract between the two. But I cannot see the difference between this case and many others in which it has been held that if I put out something which I know is to be used by somebody or other in a particular manner, and that something is used by somebody in that manner, and causes him damage, I am liable.

Thus:—A workman was one day standing on a platform painting the side of a ship that was in dock. The platform was one such as we commonly see in use under such circumstances. It was composed of boards placed lengthwise resting on other thicker planks at right angles, and these supporting planks were slung over the ship's side by ropes. Now the people who supplied the ropes and staging were not the workman's masters, nor yet the owners of the ship. They were the dock owners—the West India Graving Dock Company. One of the supporting ropes was such a rope as ought never to have been used for the purpose; for it was unfit to bear the weight of the staging plus the weight of a man. The consequence was that when the painter—who rejoiced in the celestial name of Heaven—was making the ship beautiful, snap went the rope, and down went Heaven to the bottom of the dock.

Naturally enough, he was somewhat the worse for the bump he sustained at the bottom; and he sought to make the Graving Dock Company pay. They fought his claim, however, through the County Court to the High Court, and thence to the Court of Appeal, with the result that the journeyman painter's name is enshrined in the Law Reports as the actor in a “leading” case. Said the Dock Company: “You were no workman of ours. We never paid you, nor employed you in any way. We knew nothing at all about you—good, bad, or indifferent. If you want compensation, get it from your master—if you can,” knowing all the time it was ten chances to one he could not.

But the Court of Appeal took a different view of the matter. Contract! said Lord Esher. What has contract to do with it? A man is liable for negligence quite apart from contract. Two cab-drivers in the street meeting one another have no contract between them; but if one drives recklessly and runs into the other, he must pay. And it was decided that where one man is under a duty to take care because if he does not someone will in all human probability be injured, and he neglects this duty, should evil result, the negligent one must pay the piper.

Moreover, one of the Lord Justices observed that “anyone who without due warning supplies to others for use a . . . thing which to his knowledge

is in such a condition as to cause danger not necessarily incident to the use of such an instrument or thing, is liable for injury caused to others." Now it seems to me that a manufacturer who supplies milk in tins that have burst and been resoldered is hit by both barrels of the judgment in this case.

In the first place, it would seem that **every seller of food** is under a duty to take care—reasonable care, that is—that the food he sells is not dangerous to health. He knows that someone will consume it—that is what he sells it for. And he knows that in all human probability a man who eats putrid or poisonous food will be made ill. Hence he has neglected the duty as laid down by Lord Esher.

In the second place, if he knows that the tins have been "blown" (I think that is the trade term), he is "without warning supplying to others for use" food which, if used in the way in which food of that kind is usually used, is eminently dangerous to health and life.

It has been argued, in a case decided in 1847, that anyone who sells food at all warrants (or, as the popular phrase has it, "guarantees") that **the food is fit to be eaten**. That case was of Farmer Bollett, who bought a dead pig at Lincoln market, and left it hanging on the stall of the seller until next day. As it hung there, Farmer Burnby passed by. "What is the price of your pig?" he inquired. "It isn't mine," said the stallholder. "It is Farmer Bollett's; and you'd better ask him." Bollett presently met Burnby, and to him resold the pig for £6 18s. 6d.

I do not know what condition Burnby was in when he bought that pig. Possibly he had a cold in the nose. Certain it is that as soon as he got the pig home his wife discovered the whole carcase to be rotten and uneatable. Bollett refused to refund the money, and an action at Lincoln Assizes was the result; and after that an appeal.

The lawyers cited many musty statutes and cases, including our friend "Of the Pillory and Tumbril and Assize of Bread and Ale." But the Court decided that, as Farmer Bollett had given no warranty in express language—had not, in fact, said that the meat was sound—he was not liable. But the very learned Baron Parke, in his judgment, appeared to think that a different result might have been arrived at if Bollett had been a butcher or a dealer in meat by trade.

I am inclined to think, for my own part, that when **a man whose business it is** to sell a particular kind of food sells food of that kind (*e.g.* a butcher selling meat; a baker selling bread) he does warrant that it is sound and wholesome. But I am further inclined to think that if the food sold by such a man turns out to be bad, the only remedy of the customer on the warranty is to recover back the price paid.

To make the matter clear: You buy half a sheep from a butcher. When it comes home you eat it; the first mouthful convinces you that the meat is diseased. You can recover the price you paid, whether the butcher acted by inadvertence or otherwise. But if the one mouthful makes you grievously ill, you can recover damages for the sickness only by showing negligence—*i.e.*

that the butcher acted carelessly or maliciously—that he knew, or ought to have known, of the badness of his meat.

At least, that is my reading of the matter.

An old case decided in 1814 shows that by the Common Law of England a man who sells unwholesome food when he has contracted to supply wholesome food can be *punished as a common cheat*. The man in question was John Dixon, a baker, who had the contract for supplying "good household bread" to the Royal Military Asylum at Chelsea. Dixon had two bakeries, one managed by a foreman; and from this one there were sent one day to the Asylum some loaves containing lumps of alum. Lumps, mind! Wherefore John Dixon was indicted at a Criminal Court for that "he was employed and entrusted to supply" to the Royal Military Asylum, "belonging to which Asylum were divers, to wit, 1,200 children, certain loaves of good household bread for the use and supply of the said children." The indictment continued in the quaint law phraseology of the period, "that the defendant being so employed and entrusted, but being an evil disposed person and not regarding the laws, *with force and arms* (you'd imagine he had gone about with a club in one hand and a pistol in the other; but that was only their way of putting it in those days) did unlawfully, falsely, fraudulently, and deceitfully, and for his own lucre," deliver to the asylum "divers, to wit, 297 loaves of bread," pretending they were "good household," whereas "on the contrary they contained divers noxious and unwholesome materials not fit or proper for the food of man as the said defendant well knew."

Dixon's foreman gave evidence. He said that he put in the alum on his own account, without Dixon's knowledge. But the prosecuting lawyer cross-examined him into a cocked hat, as the saying goes; and the jury did not believe him. It takes a good deal to make a jury believe that a servant cheats for his master's benefit without his master's knowledge. The baker also made a feeble attempt to prove that the amount of alum in the bread was not noxious and unwholesome, but very wholesome and nourishing. The judge swept that away with the remark that lumps of alum could not be wholesome for children.

The celebrated Sir John Scarlett, the cleverest advocate of his time, who was Dixon's counsel, made "divers, to wit, a great many" attempts to wriggle out of the charge. But in the end John Dixon was convicted; and had the pleasure of going about for the rest of his days branded as a common cheat. And I daresay the "divers, to wit, 1,200" children of the non-commissioned officers, drummers, and privates of his Majesty's Army, whose fathers had fallen on Spanish battlefields, had better bread for the future. Only, you see, Dixon would never have been convicted unless the prosecution could have proved that he knew of the adulteration of his bread. That is where the Common Law failed to deal with adulteration in a satisfactory manner. At the same time, it is important to observe that a man can to this day be indicted as a common cheat if he does what Dixon did, and does it wilfully

SECTION II.

THE GENERAL LAW UNDER THE FOOD AND DRUGS ACTS.

Definitions—Food—Condiments—Baking-powder—"Chewing gum" case—Drugs—Arsenical soap—Beeswax—Camphorated oil—Article sometimes a drug, sometimes not—Adulteration, what is—Four kinds of adulteration—SELLING GOODS NOT OF THE NATURE, SUBSTANCE, AND QUALITY DEMANDED—Most usual offence—The section of the Act—What is a sale?—The psychological moment—Importance of time of declaration of mixture—How to keep yourself safe—Who is the seller?—Master and servant—Servant liable if actual seller—Master also liable for sale by servant—Tricks of milkmen—Assistant adulterating for his own profit—You may be liable for adulteration by strangers not servants—Water added to milk on the railway—Moral innocence no defence—But may make a difference in the penalty—Sale must be to prejudice of purchaser—What is prejudice?—No offence if purchaser knows what he is getting—How to protect yourself without a label—What was article sold as?—Who is the purchaser?—What is nature, substance, and quality?—"And" means "or"—Fixed standards for foods—*Pharmacopœia* standard for drugs—Tincture of opium means "commercial opium"—Mercury ointment—Salt in beer—Arsenic in beer—Selling something entirely different from article demanded but genuine of its kind—Preservatives—Must not be injurious to health—Boracic acid—Glacialin—Formalin—Proprietary medicines—Adulteration creeping in unavoidably—Pepper—Caper tea—Buttermilk—COMPOUND ARTICLES OF FOOD AND COMPOUNDED DRUGS—Offence to put in wrong ingredients—Or to omit ingredients asked for—Prescriptions—Receipts—F frivolous complaints—ABSTRACTING PART OF THE GOODNESS OF FOOD—Person who abstracts liable—Also person who sells—Milk usually affected—Servants, how liable—Abstraction only punishable if deleterious—Cocoa, extraction of oil—Ginger—Carraways—Moral innocence no defence—MIXING INJURIOUS INGREDIENTS—Meaning of "mix"—Sulphur in hops—Baking-powder—Copper in peas—Knowledge of adulteration—Negligence—Penalty—How the Acts are administered—The way to cross-examine an expert—Difference between prosecutions under different sections—COMMON SUBJECTS OF ADULTERATION—Butter—Adding fat—Adding water or milk—Irish butter—Salt—Cheese—Lard added—Artificial colouring—Canned foods—Pickles—Mustard—When should be sold as mustard condiment—Pepper—Lard adulterated with beef-fat—What is "necessary for production" as an article of commerce?—Spirits may be mixed with some water—MINOR OFFENCES—Refusal to sell sample to be tested—What is the offence—Reasonable price to be paid by officer—Officer cannot make you break open tin or packet—Tin or packet must be duly labelled—What is duly labelled?—Article must be exposed for sale, or on sale by retail, in a shop or premises or street or public place—Obstructing an officer—How offence committed—Corrupting an officer—Government Departments may now intervene—Future offences—Orders in Council.

It is always important, in considering any subject, to get your definitions right first. So it is essential, when we are dealing with the subject of adulteration of food, to define what is meant by "Food," and what by "Adulteration." Else we shall stick in the mud of doubt before we are long on the way.

I will, therefore, first ask and answer the question, **What is Food?** I am not much concerned with the dictionary meaning of the word; because all that my readers want to know is, what is food within the meaning of the Act. To begin with, it should be noted that "food" is used in the widest sense. It includes not only things taken into the body for nourishment, but also for refreshment. For the statute says that the term "food" includes every article used for food or drink by man except drugs and water.

Even this is not enough. For such a definition would not include condiments, colouring matter, and flavouring matter. Nor would it include such things as baking-powder. Why not? you say. Well, because a court of law once held that baking-powder is not an article "used as food" by man. And that is why Parliament found it necessary to add to the definition these words, "*any article which ordinarily enters into or is used in the composition or preparation of human food,*" and also "*flavouring matters and condiments.*"

Thus, you observe, there is brought within the clutches of the Acts such a thing as baking-powder. That is "used in the composition or preparation" of such "human food" as pie-crusts. Also Yorkshire relish and Worcester sauce, anchovy sauce and the like, for these are "condiments." Essences, such as essence of lemon and cloves and vanilla—for these are "flavouring matters." So that nowadays a merchant who sold baking-powder made up of 20 per cent. of bicarbonate of soda and 40 per cent. of ground rice, and added thereto 40 per cent. of alum, would run some risks which he did not run before the year 1900. The alum is quite unnecessary for the composition of baking-powder, and is, no doubt, put in it for the purpose of cheapness. That it also eats away the coating of the stomach of the household using the powder appears to matter little to the simple manufacturer. At least, it used to matter little. Now it may matter to the extent of a heavy fine. Because he may now be convicted of mixing injurious ingredients with food, and sentenced to a fine of £50 for the first offence, or six months with hard labour for the second and following offences.

In this connection, pursuing the inquiry "What is Food?" we must bear in mind that for an article to be food, it must be intended to be eaten or drunk. It seems to be commonsense that if I sell you, over the counter of a public-house, a pint of beer mixed judiciously with arsenic, it is of little use for me to plead that the beer was never intended to be drunk. To be swallowed by the bibulous is the natural and ordinary use to which beer is put. I am told that boots shine with more lustre if a little beer is added to the blacking; but few people would contend that beer was not primarily a drink—and in these Acts food includes drink. To turn the tapestry, it seems clear that if I sell you something never intended to be swallowed, and you swallow it, you ought not to be able to blame me.

If any reader imagines that the last paragraph was written for fun, or has no practical application, let me disabuse his mind. It may have a very practical application for him if he keeps a **sweetstuff shop**. One Bennett kept—and possibly still keeps—a miscellaneous shop at Teddington, where he sold groceries, sweetmeats and other things. When Bennett's mother was serving in the shop one day an inspector appeared, who bought from her samples of many sweets. He then said, "What other cheap sweets have you?" She replied, "There is some 'chewing gum' on the counter," and pointed to a box containing a number of small packets, each labelled as follows: "BARRATT AND CO.'S CHEWING GUM. THIS MUST NOT BE EATEN. FOR CHEWING ONLY." The inspector, having looked at one of the packets and read the label, said, "How much?" They were of the

ridiculously low price of four a penny. Threepennyworth became the inspector's property.

Now it turned out that each packet contained 8·3 per cent. of paraffin wax, a substance essential, it was said, for the manufacture of this article. The wax would not dissolve in the mouth or the stomach, being quite impervious to the saliva or the gastric juices. It could be swallowed; but would be as if one should swallow a piece of iron. Any child eating threepennyworth of the "chewing gum" would probably have a dreadful stomach-ache, if not worse. "But," said the shopkeeper, "the sweetmeat was never intended to be eaten—only to be chewed and spat out." It was, therefore, not an article of food.

The judges upheld this contention, though without enthusiasm. They did not hold that it was absolutely lawful to sell "chewing gum" containing wax; but they held that where it was clear that the article was not intended to be taken into the system, and plenty of notice had been given to the purchaser, no offence was committed. It might have been different if the shopkeeper had sold to a child who could not read.

Having, though with difficulty, attained the definition of "food," we now come to the question, **What is a drug** within the meaning of the Acts? The word is used, in ordinary speech, to signify any substance—animal, vegetable or mineral—used in the composition or compounding of medicines. The Act of 1875 says the term "shall include medicine for internal or external use." The genius who drew this little thought of the trouble that would arise one day. Little did he know that he would set by the ears two judges of the High Court.

It was all about *arsenical soap*. A certain tradesman in Richmond one day was asked by a customer for "arsenical" soap; and he supplied a tablet of Dr. Mackenzie's arsenical toilet soap. The customer turned out to be a nuisance inspector, who purchased for purposes of analysis. When the soap was analysed, it appeared to have no arsenic at all in it. The tradesman being summoned for having sold a drug to the prejudice of the purchaser, the magistrates dismissed the case; but the prosecutor appealed. The tradesman took the bull by the horns—the soap, he said, was not a drug at all. It was, not used for healing purposes, for medicine, either for internal or external application. It was used as a means of getting the dirt off the skin. If this soap, "arsenical" soap, is a drug, so is any other soap, he argued.

The two judges were Mr. Justice Hawkins and Mr. Justice Wright, and they both agreed in acquitting the tradesman. But they did so for entirely different reasons. Said Sir Henry Hawkins, "This is not a drug at all. How can arsenical soap without any arsenic in it be a drug?" Said Sir R. S. Wright, "The soap asked for was a compounded drug. Therefore the shopkeeper gets the benefit of the exception which says that compounded drugs do not come within the section under which this man was summoned." If I were asked, I should say that this case did not decide much, but if anything, Mr. Justice Wright's judgment appears to be the more correct. I should call arsenical soap a compounded drug.

Now there are many substances in nature that can be used as drugs, and are, sometimes, used as drugs ; but which can be, and often are, used for other than medicinal purposes. Take carbolic acid—a very useful drug to be used for dressing wounds, to prevent blood-poisoning, or, as medical men put it, an antiseptic dressing. But carbolic acid is used, and very properly, for purposes quite different—for flushing drains and sewers, for adding to water with which floors are washed. The same with Condyl's Fluid. A very curious case was decided by Justices Grantham and Wright in the year 1896, the question being: "Is beeswax a drug?" Off-hand, we would instantly reply, Certainly not! Miss Cecilia would say, "Beeswax! Why, that is the stuff they polish floors with to make them smooth for dancing." Your cabinetmaker would say, "Beeswax! That's what we mix with some other ingredients to make a polish with." But in the case in question, it was gravely affirmed on the one side, and denied on the other, that beeswax was a drug.

Personally, I think beeswax is not a drug, in the proper sense of the word. If you look in Murray's Dictionary, you will see "drug" defined as "an original, simple, medicinal substance, organic or inorganic, whether used by itself in its natural condition, or prepared by art, or as an ingredient in a medicine or medicament." Now beeswax is not a "medicinal substance." It is, indeed, employed in one form for making up certain medicines; but not as being of itself of any medicinal value—merely as a carrying agent; just as bread-crumbs are used in making certain pills—not because they do the patient any good, but merely to carry the stuff that does act.

In the case I am dealing with, a certain agent of a food inspector went into the shop of a country grocer named Fowle, who kept shop at Marden, Kent, and asked for a quarter of a pound of beeswax. Fowle duly supplied it, and it was analysed. Then it was found to be impure—50 parts beeswax and 50 parts paraffin. The inspector took out a summons. He could not, under the Food and Drugs Acts, summon the grocer unless the article sold was either an article of food or a drug. Clearly beeswax is not a food. But it is mentioned in the *British Pharmacopæia*, and on the strength of that the inspector charged the grocer with selling him a "drug not of the nature, etc., demanded." The defence was, "This was not a drug."

Mr. Justice Grantham "could not admit that beeswax was a drug." He went on to point out that it was sold, not by a druggist, but by a grocer. And Mr. Justice Wright gave as his opinion that whether an article was a drug or not was a question of fact. If this means anything, it means that for the purposes of the Act, **an article may be a drug at one time and not at another**; and I am not disposed to quarrel with this statement. If you buy from a chemist and druggist an article named in the *Pharmacopæia* as a drug, you probably are buying it as a drug—that is, for medicinal purposes; but if you buy the same article from a grocer or an oilman, you are probably buying it for domestic purposes. And that seems to me the test of commonsense. So that the question is always one for the justices, or sheriff, before whom the case comes in the first instance, to decide. If I, a country grocer, am charged with selling an adulterated drug, to wit, carbolic acid,

and I prove (a) that I am a grocer ; (b) that nothing was said to me about medicinal purposes ; (c) that the quantity sold was large—not the sort of quantity one uses for medicinal purposes ; (d) that the price asked for and paid was not the price charged for best refined carbolic, such as surgeons use, but was the price generally demanded for domestic carbolic—for use in flushing drains, etc.—in such a case I think I should get off scot free. I should be entitled to contend that the article sold was not a drug.

Given the fact that a particular substance is sometimes used as a drug and sometimes not—just as frequently not—you have to decide, Was it a drug in this case? Now in my opinion it is not for the tradesman to prove that he did not sell as a drug ; it is for the prosecutor to prove that he did. He who affirms must prove.

Inspector affirms: "Defendant sold to me a drug." "Prove it," cries the village grocer ; and the inspector must try to prove not only the sale, but that the substance was a drug. If he can prove

- (a) that the tradesman was a druggist or pretended to sell drugs ;
- (b) that the substance was sold at druggists' prices ;
- or (c) that the tradesman was told the substance was wanted to be used in making up a medicine (e.g. in making up ointment),

then probably the justices (or sheriff) will be of opinion that the sale was the sale of a drug. For if I go into a grocer's shop and say, "A pound of beeswax." "Yessir." "How much?" "A shilling"—the chances are I want it for polishing an oak floor or something of that kind. But if I ask at a druggist's for half an ounce of beeswax, and pay sixpence for it, I probably want it not for domestic purposes, but to use in making up a medicine. So that **sometimes a drug is not a drug.**

It does not follow—mind this—it is **not the law that because a grocer sells a drug** therefore he need not sell it up to the *Pharmacopœia* standard. It depends on the fact whether the article was sold as a drug or not. There are some things—beeswax, for instance—which may or may not be drugs, and then a good deal may turn on whether the seller was a grocer or a chemist, and on the price demanded. But when you have a thing invariably, or almost invariably, used for medicinal purposes, it is, on the face of it, a drug. And if the seller wants to show that he sold it as something else—that is, for any other purpose—he must prove it.

Take the case of **camphorated oil**. Not long ago Messrs. Walters & Co., grocers and general dealers at Bradley in Wiltshire, were prosecuted for selling camphorated oil not of "the nature, substance, and quality demanded." The oil sold contained 10 per cent. of camphor by weight. According to the *British Pharmacopœia*, camphorated oil is a drug containing 21 per cent. by weight of camphor. Messrs. Walters & Co. said, "We are grocers—not pharmaceutical chemists. We do not pretend to be that. Therefore the *British Pharmacopœia* has nothing to do with us. It only binds druggists and chemists. Our oil was camphorated oil: not adulterated: only weak in quality."

But the Court convicted. "Camphorated oil," they said, "meant camphor-

ated oil up to the *Pharmacopœia* standard. That was the only camphorated oil properly known as such. If the seller wanted to protect himself he should label the bottle "Diluted camphorated oil." There was no evidence here as to whether the oil was sold for medicinal purposes or otherwise; and, it being a matter of common knowledge that it usually is so used, the Court assumed that it was so sold in this case. One knows that camphorated oil is largely used as an embrocation for children who have cold in the chest; and it is, of course, highly important that the camphor should be there in proper proportion to the oil.

We have now arrived at our two all-important definitions. We know what "food" is, and what a "drug" is. It may now be well to ask, **What is Adulteration?** Curiously enough, there is no definition in any of the Acts of Parliament of "adulteration." This is probably because the word "adulteration" does not occur in these Acts; nor is adulteration the only offence dealt with by them. You have to extract what is meant by adulteration within the meaning of the Acts from several clauses. And that is what I will now proceed to do for the benefit of my readers. Only I will not do as the gentlemen who drew those Acts have done. I will not sprinkle my definition over several different pages, but will try to put it all together.

It may be well to premise that you may adulterate in more ways than one. You may adulterate by addition; you may adulterate by subtraction.

(1) You may adulterate by adding to a beneficial article of food some ingredient of a character injurious to health. This is the worst, because the most dangerous, of adulterations. For example, adding alum to bread to whiten it; mixing sulphate of copper with peas to make them green.

(2) You may adulterate by adding an inferior substance, not harmful in itself, to a superior article of food, and selling the whole as the superior article. Thus, you take a pound of butter and mix with it half a pound of hog's fat, and sell the whole pound and a-half as "Best Dorset Butter." Or you take a pint of milk and add thereto a quarter of a pint of water, selling the pint and a-quarter as milk.

(3) You may adulterate by adding something which gives an inferior article the appearance of a superior article, and selling the whole as the superior article which it pretends to be; as, for instance, adding a yellow colouring matter to flour, to make it look like mustard.

(4) You may adulterate by subtracting from the article some of its ingredients, and then selling it as though it were in its natural state. The commonest form of this adulteration is the subtraction from milk of some of its cream.

Now the law is that whosoever does any of these four things does that which is illegal.

Dealing seriatim, though not in the order afore-mentioned, with the offences that may be committed against the adulteration laws, I will first take the offence that is most common. Indeed, many of the others include this one. What I mean is this: that the adulterator is generally charged with

SELLING GOODS "NOT OF THE NATURE, SUBSTANCE, AND QUALITY DEMANDED";

and it is a fact that when he is charged with something else, he could generally be charged with this instead if the prosecution were so minded. Thus, a milk-seller, in response to a demand for a pint of milk, sells milk containing a "preservative" which is, in effect, a poison, and injurious to the health of the consumer. He can be summoned for selling an article of food containing a mixture of something injurious to health. If he is so summoned, he has certain defences open to him. (These will be explained later in the chapter.) Or he may simply be summoned for selling milk "not of the nature, substance, and quality demanded." Then he is shut out from the defences he would have had if he had been summoned for the other offence; but has a different set to rely on.

It comes to this, then—the same act, or the same omission, may be regarded in one of two ways. You may regard it as an attack on the health of the consumer, or as merely an attack on his pocket. If I try to convince a judge that you have sold me something calculated to injure my health, that is a grave charge—much more grave than an accusation against you of adding something to my food that might cheat me but not affect my health. The graver the charge the greater the difficulty of proving it, and the heavier the penalty on the offender when it is proved. Therefore, says our law, the greater the facilities to be given to accused for his defence.

It may be said that of the two charges above stated, the more serious one is the easier to rebut. It is not easy to convict a man for selling an article adulterated so as to be injurious to health. On the other hand, it is more heavily punished; the fine that may be imposed being two-and-a-half times greater for the first offence.

Owing, in a great measure, to the difficulty in obtaining convictions for the more serious offence, the public authorities for the most part prosecute alleged adulterators on the lighter charge, which is, in effect, that of **selling something different from that which you were asked for**. At least nine summonses out of every ten are issued upon this accusation; and I propose, therefore, to treat the section of the Act as completely, and explain it as fully, as I can. Here it is in its legislative nudity, straight from the Act of Parliament:—

S. 6. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say,

- (1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof;

- (2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent ;
- (3.) Where the food or drug is compounded as in this Act mentioned ;
- (4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

You observe that the section says "shall **SELL**." Now **what is a sale?** or, rather, when is the sale complete? I will tell you how the question becomes important. It is because up to the moment the sale is completed the seller can give notice to the buyer that the article is a mixture ; after the sale is completed he cannot. Take this case :—(I.) An inspector's agent comes to your shop, and says, "One pound of mustard, please." Now you have no pure mustard in the shop ; but you have a mixture of mustard and flour that your customers generally find more palatable. You begin to serve the agent. You have actually weighed a pound, and tied it up, and are handing it over the counter when the agent says, "I want this for purposes of analysis." You draw back your hand, and say, "I am sorry I cannot supply you with mustard. I have here a mustard condiment or mixture. You can have that if you like." He had not paid, or put the money on the counter at the time.

Now another case :—(II.) The agent asks for a pound of mustard. You weigh out a pound of the mixture, and put it on the counter neatly wrapped up. He pulls out a florin ; you take it, put it into the till, take out sixpence change, put it on the counter alongside the packet, and push the mustard and the sixpence over towards the purchaser. He does not pick them up then and there, but produces certain boxes and says, "I have bought this mustard for purposes of analysis by the public analyst." You give him no time to say more ; but grab both mustard and change. Then you say, "I do not sell this as pure mustard, but as a mixture." The inspector's man says, "You'd better hand it over, or it may be the worse for you." You therefore hand it over.

Yet a third case :—(III.) The agent asks for a pound of mustard. You weigh out a pound of mixture, wrap and tie it up, and put it on the counter "How much?" says the agent. "One-and-six." The inspector's man, putting his hand in his pocket, says, "I have bought this for purposes of analysis by the public analyst." You put out your hand, saying, "Then I shall not sell you this," and try to recapture the packet. But the agent is too quick for you. He grabs the packet with one hand, puts down a shilling and a sixpence on the counter with the other, and promptly divides the mixture into four parts as required by law in these cases. As soon as he has captured the sample and laid down the money, you say, "You understand this is not pure mustard, but a mixture."

Now the point is, in all the three cases, **whether or not there was a complete sale before the notice of mixture was given.** It is most important to you ; because if you said "This is a mixture" before there

was a complete sale, you cannot be convicted of selling an adulterated article to the prejudice of the purchaser. If, on the other hand, you said "This is a mixture" after the sale was completed, you will be convicted. Why? Because you sold without notice to the purchaser. It is of no more avail for you to give him notice of admixture one second *after* you have sold the mustard to him than if you had given him notice one week *after*. *Per contra*, if you gave him notice one second *before* the actual moment of sale, you are just as safe as if you had done it immediately he asked for the mustard. You will, therefore, grasp the importance of the question I am about to put and to answer (to the best of my ability)—

What is the psychological moment?

Now as I understand the law relating to sale of goods it is this:—I ask you to sell me something that has to be weighed or measured or counted. For instance—a pound of mustard, a pint of beer, three sticks of chocolate cream. You have the articles in bulk—a drawer, a barrel, a box. If you open the drawer, or go to the barrel and turn the tap on, or open the box; or if you say, "Yes, sir!" or if you nod; or by any other word, act, or gesture show that you intend to execute the order, to supply me with what I ask for, I say that you agree with me, in law, to supply me with what I asked for. In plain language, I made you an offer, and you accepted it. That is all that is necessary to make a binding contract between us. This is all fully explained in Book III., Chapter I.

So that when the inspector's "nark" said, "A pound of mustard," and you went to weigh it out, you thereby became, in law, bound to supply him with a pound of mustard. But do not jump to any hasty conclusions. A contract to sell is not a contract of sale. If, having agreed to sell the goods, you then refuse to sell, the buyer can bring an action for damages for breach of contract. But there was never a sale, a completed sale, only an agreement to sell. Therefore, you had not "sold" an article, adulterated or otherwise, to the man merely by agreeing to sell it. But in all three cases you did more than this. You weighed the pound of mustard. Now if you read pages 719 and 720 (Book III.) you will see that as soon as the goods are weighed to meet the contract, the contract is completed; and the goods belong to the buyer.

As soon, therefore, as you weighed out the pound of mustard, it was no longer yours, but the inspector's. Yes, it was his; but only upon one condition. Condition? Yes, certainly. The condition that he paid for it straight down. Now you cannot say that a sale is "complete" until every condition has been fulfilled. You cannot say that a man has sold goods to you until either (1) he has delivered them to you on credit, or (2) has been paid—it is quite the same if the money is offered and refused—when the sale was for ready money. Therefore, I think, in Case I. the sale was not complete, because though you had the mustard weighed out, ready for him to take when he paid for it, he had not paid for it, nor offered to pay.

In Case II. I think the sale was complete, because as soon as the agent offered you the money—which, under the contract, you were bound to take—the mustard became wholly his in law, and you ceased to have anything more to do with it. The fact that you had not given him change makes no difference, I think. There must be finality somewhere. Mind, you were not bound to give change for the florin; but having taken the florin and thus accepted it, you are bound to give the change. But in my opinion the giving of change has nothing to do with the sale. It is a purely extraneous transaction.

In Case III. I think there was a complete sale also. Please be very careful in reading this case. The course of events was (after mustard weighed out)—
You put the packet on the counter.

AGENT: "How much?"

YOU: "One-and-six."

AGENT: "I bought for purposes of analysis by public analyst."

YOU: "I shall not sell."

AGENT puts down one-and-six and takes possession of the parcel.

Now clearly the agent had a right to take possession of the mustard as soon as he put down the money. Why? Because it was his and not yours. As soon as you weighed it, it was his conditionally. He has fulfilled the condition. Therefore it is his unconditionally. You had no manner of right to say, "I will not sell," at least, you could say it, but it was wasted breath after you had weighed out the mustard, because by that act you did sell—conditionally, as I have said.

And not until the condition has been fulfilled do you say, "This is a mixture." You ought to have said it before. That was your mistake. If, instead of saying, "I shall not sell" (which you had no right to say), you had said, "I sell this as a mixture," you would have been right—if you had rapped out the words before the unwelcome customer rapped down the eighteenpence. The sale was complete, on your side of the transaction, as soon as you weighed the mustard, as soon as the pound asked for had been separated from the bulk of the mustard in your drawer. It was complete on his side when he offered—"tendered" is the legal word—the money. Not, observe, when you accepted the money—that has nothing to do with it. The money is there for you to take, being the exact amount due to you.

Let me say that as far as I can see the result is the same in a fourth case that can easily be imagined. The agent of the law comes in and says, "Have you any loose mustard—not in a tin?" You say, "Yes." "How much is it?" he inquires. "One-and-six a pound." "Then I will take a pound;" and with that he puts eighteenpence on the counter. You then weigh the mustard; and as you put it on the counter he tells you that he has bought for analysis. You pick the packet up and make your declaration that the article is a mixture. Again I think you are too late.

For I cannot think that it makes any difference to the fact of sale whether the buyer has got actual physical possession of the goods or not.

They are his in law as soon as they are weighed, or measured, or counted, or separated from the bulk to answer the order. They are his absolutely so long as he is ready and willing to pay for them. And when he shows his readiness and willingness by offering the price, the sale is over. It is not then of any avail for the seller to attempt to qualify what he has done. **You can only keep yourself safe** in one of two ways:—One is by labelling every mixture as a mixture. If you do this there is no need to say a word, so long as the label is distinctly legible, and contains no other writing or printing that obscures the notice of mixture (*see* Section III.). The other is by making a practice, in all cases where you sell mixed goods—*e.g.* cocoa, mustard, coffee—to say to the customer, “This is a mixture,” adding such other words of explanation as you think fit.

Let us note that it is the seller who is liable—the “person (who) shall sell.” We ask, therefore, **who is the seller?** I confess that if I had to answer this question out of my own head, without taking any notice of decided cases, I should be inclined to say that the person to whom or for whose benefit the money is paid by the purchaser is the seller. I should be inclined to say that if I send out my servant with a cart of vegetables to hawk in the street, I am the seller of those vegetables; because I am the owner of the vegetables, I dictate to my servant upon what terms he is to sell. True, it is his voice that calls out, “Green peas ninepence a peck!” but mine are the words he utters.

A great many persons took the same view, until a case from South Shields came before the Courts. A dairy company called “The Farmers’ and Cleveland Dairies, Limited,” had a shop at South Shields. In charge of this shop, as local foreman, was one Hotchins, who used personally to go out in the morning with the milk cart to serve the regular customers. The milk cart was painted in distinct lettering with the words “The Farmers’ and Cleveland Dairies Company, Limited”; so that no one could have imagined the man in the cart to be the owner thereof, seeing that he could not, by himself, be a limited company. Now as Hotchins was on his round one morning, he came under the eye of Hindmarsh, a nuisance inspector of the borough, and Hindmarsh thought he would try the milk of the Farmers’ and Cleveland Dairies Company, Limited. He therefore went up to Hotchins, and asked for three gills of milk. A pint-and-a-half (for in the north of England a gill means half a pint) of the liquid from a can was duly measured out; threepence was paid for it; and then Hindmarsh said, “I am purchasing this milk for analysis.” He also asked Hotchins for his correct name and address. Hotchins gave it, but said, “I am only a foreman of the Company, and am selling the milk for them and not for myself.” He drew Hindmarsh’s attention to the name on the cart.

It was not long ere Hotchins received a summons for selling milk not of the nature, substance, and quality demanded. For the milk was watered down—it contained 12 per cent. of added water, in fact. He referred it to his employers, who loyally defended him. This was a case in which the employers would have had a complete defence, if they had been summoned. For they had bought the milk under a written warranty of its genuineness (*see* Section III.).

But this defence, though open to them, was not open to Hotchins. He had not bought the milk with a warranty: he had not bought it at all. So it became very important for the Company to shift the burden of the offence from Hotchins's shoulders to their own. (I ought to add that since this case the law has been altered so as to give a servant the benefit of the master's warranty.)

A battle royal raged, therefore, on the question, Who was the seller of the milk to Inspector Hindmarsh? The case was hard fought before the magistrates at Shields; and afterwards on appeal to the Queen's Bench. Said Hotchins's counsel: "The Dairies Company must be the seller—why? Because if some customer did not pay, who is it that would pursue him for the price? Not Hotchins. Because such a customer would say, 'I never owed you anything. My dealings were with your employers.' To whom did the milk belong that was sold to Hindmarsh? Not to Hotchins. To whom did the threepence belong that Hindmarsh paid? Again, not to Hotchins. Why should Hotchins, who would not gain anything even if the milk were adulterated, be made liable?"

But these arguments, good as they were, did not prevail. Chief Justice Coleridge presided over the Court of Queen's Bench; and he delivered judgment on it condemning Hotchins. Lord Coleridge almost invariably interpreted the Food and Drugs Acts as widely as possible against the adulterator. And in this case he stamped an interpretation upon the Acts of a very far-reaching character.

He said that in his opinion a "person (who) shall sell" includes all those who by a physical act transfer an adulterated article from one person to another. Thus **servants and agents are liable as well as masters and principals**. If your wife, during your temporary absence, runs into the shop and serves a customer with a loaf of bread containing alum, she can be prosecuted under this section, though she is morally as innocent as any lamb. As a rule, of course, the authorities prosecute the principal rather than the agent, the shopkeeper rather than the assistant, the master rather than the servant. And this for the very good reason that the first will be more likely than the second to have money to pay the fine and the costs. Indeed, it very often happens that the master is summoned and has to pay when the servant has done the wrong himself for his own purposes.

For it is, sad to relate, only too common for assistants in the milk trade to cheat both their masters and their customers; and to risk getting the master a bad name for private gain. A milkman going on his round has so many gallons of milk given to him; and for this milk he must account at so much a gallon. That is, he must take in so much money for every drop of milk not left in the churn when he returns to the shop or farm or dairy. Now most milkmen have, in addition to their regular custom, a certain amount of casual trade. It may be people, not regular customers, coming to buy a pint or a quart. It may be some regular customers wanting more milk than usual. Thus it happens that a milkman whose regular round is 10 gallons may be asked for 10½ gallons. If he is honest, he either

buys more milk from another reliable dairyman or else says, "Sorry! Sold out!" But if he is dishonest he procures water, or buys skimmed milk, or he, maybe, is carrying skimmed milk himself; and with the water or skimmed milk he dilutes his new milk. Nor does his employer, as a rule, get the benefit of this knavery. But if the inspector comes along and takes a sample, the employer may get the disgrace—probably the ruin of his trade—and will have to pay the fine and costs.

There was a hard case of this kind that came before the Courts in 1892, when a milk-seller named Brown was convicted by the magistrates for selling adulterated milk. Mr. Brown got his milk from the country with a written warranty of its quality; and it was his practice, for that he knew how servants will do as they ought not to do, to take a sample out of every can before sending the can out. He employed a good many men, and he gave his men the most positive and particular warnings that if he found them playing any tricks, if he found any samples of milk taken from their cans subsequently not equal to the samples taken before starting, he should dismiss them out of hand. In fact, Brown seems to have been an honest tradesman who did his level best to act according to the law. But it was of no avail to save him from prosecution.

He had in his employ a man name Pittard, who went round with a truck; and one morning the devil of avarice tempted Pittard, and he watered the milk after leaving the employer's yard. That Pittard did the watering was proved by the fact that a sample taken from his can before he left the yard was pure and good milk, and also by the guilty man's own confession. As Pittard was walking down Shipton Street, Bethnal Green, bawling out "New milk! New milk!" he was approached by one Foot, who bought and paid for half a pint. Then said Foot: "I am a milk officer, and have bought this milk for analysis." Of course, when the milk was analysed, the presence of the added water became apparent—there was 13 per cent. of it—and a summons was at once taken out, not against Pittard, but against Brown.

Before the police magistrate at Worship Street, the unfortunate Brown vainly pleaded his ignorance of his servant's wrongdoing. "I did not actually sell the milk," he said, "nor was I cognisant of the adulteration." But the magistrate fined him, nevertheless. He appealed, and his appeal came before Mr. Justice Hawkins and Mr. Justice Wills. These judges concurred in saying that when a master sends his servant out to sell milk, the master is the seller: he is "a person (who) sells," and he is responsible if his servant sells adulterated milk. Whether the adulteration took place without his consent or connivance makes no difference to his guilt. For "the Act is expressly enacted to prevent the sale of adulterated articles," said Sir Henry Hawkins. This is the key to the statute—particularly to the section of it we are now considering. It was passed for the protection of the public against adulteration; and as the public suffers just as much by the innocent sale as by the deliberately intentional sale of adulterated food, the one is made punishable as well as the other. Indeed, in this respect the legislature has departed from the traditional spirit of English law, which says that no man is criminal unless the

prosecution can prove criminal intent against him. Here the prosecution has to prove nothing of the kind.

By the way, in order to avoid being misunderstood, I ought to say that the section is of general application. It does not merely apply to milk; but it happens that a large number—a very large number—of the cases reported are milk cases. The liability of a master for the act of his servant is just as great in any other trade. For example, if you are a provision merchant, and when you are out of the way, one of your men sells stearine lard as pure lard, contrary to your orders, you will be just as much liable as the dairyman whose salesman sells skimmed milk for new.

A trader may be convicted not only for unauthorised acts by his own servants, but he may also have to **suffer for wrongful acts of outsiders**—people over whom he has no manner or sort of control. The unlucky milk-seller is again the man most liable to be hurt. Many a London milk-seller whose milk comes up from the country by rail can vouch for the truth of what I say when I remark that certain railway servants seem to think they have a sort of right to supply their personal wants out of food passing through their hands in course of transit. Pecks of fruit, quarts of milk, bushels of potatoes, are pilfered daily. In the greater number of cases that is all the damage done. But in the case of milk there is a natural temptation to add deceit to theft by making the cans appear not to have been tampered with. What easier, after you have taken a pint of milk out of the can, than to add a pint of water? This is a double wrong.

For it may happen to the wretched farmer whose milk has been stolen as it happened to one Alder, a dairy farmer of Wantage. This man had a contract with a customer in London to supply pure milk to be delivered every day at Paddington Station, London. Alder delivered one day (amongst others) a churn of milk to the Great Western Railway at Wantage for conveyance to Paddington. The milk was pure and unadulterated when it left Wantage. When a milk inspector took a sample of it at Paddington Station it was not pure, but contained 9 per cent. of added water. The honest farmer was summoned. He proved to the magistrate's satisfaction that he had not, nor had his servants, adulterated the milk, but that it had been adulterated during carriage by a pilferer. Yet, though this was so, though it was impossible for Alder to have protected himself against the dishonesty of the railway servants, the Court of Queen's Bench decided that he must be convicted.

From these cases you will see that under this section—mind that, under this section—**moral innocence does not matter**. Your conscience may be as clear and void of offence as that of the judge himself. You may be the victim, not the swindler. Yet you must be prepared to suffer if you or your servant or agent has in fact sold food which is in fact adulterated. You see, therefore, how careful it behoves you to be. You cannot easily protect yourself against the railway people; but you can do something to protect yourself against dishonest servants. One thing you can do is to pay them a decent, living wage. Another thing is by never asking a servant to do any-

thing underhand, and never letting him see you do any cheating. Example is the most contagious thing possible. It creates a moral atmosphere. At the same time, it is just as well to let your servants know that you keep a sharp look-out on them. Servants who know that the master is vigilant—not necessarily suspicious, but watchful—will hesitate before trying to cheat. Above all, it should be the rule of the place that a servant caught attempting to infringe the Adulteration Acts should be discharged, and this whether or not he is discovered by the public authorities.

Even if, despite your precautions, example, and precept, one of your servants lets you in, one day, for a prosecution for adulteration, yet your precautions, example, and precept will not have been wasted; for though under this section moral guilt or innocence has nothing to say to the legal guilt or innocence of the accused, yet it has a great deal to say **to the amount of the penalty**. A man both legally and morally guilty will be fined heavily. He who can show his moral innocence will be fined lightly. I have seen a tradesman, for a very slight adulteration, done deliberately, have to pay £10 and costs; while at the same sitting of the Court another tradesman charged and found guilty of a far more substantial adulteration was only fined half-a-crown. But the second was the victim of a careless—or perhaps fraudulent—servant. So that a clear conscience may be something more than its own reward. I have heard of some magistrates who say, "Moral guilt has nothing to do with us. If you admit the lard (or whatever it is) was adulterated and have no legal defence—if, in fact, you admit you are legally guilty, there is an end of it. We cannot have our time wasted by listening to your plea of moral innocence." There they are wrong. They are bound to admit such evidence, and ought to take it into account in mitigation of the sentence. For so Justices Hawkins and Wills decided in the case of *Brown of Bethnal Green* (*see p. 1152*).

There is another thing that ought to be said before leaving this subject. It was once held by two judges in a lard case that the public authorities must prove the accused shopkeeper to have been guilty of fraud—that is, of intentional cheating, before he could be found guilty. Therefore he could not be guilty when his servant, without authority, had done the wrong. Maybe some of you saw that case in a newspaper at the time (1891). If so, I hope you have not been getting into trouble by following it. Because it was undoubtedly bad law; and the Courts have never allowed it as a precedent since. Not every judge is always right. The best sometimes forget; and Jove himself nods now and then. The wonder is the judges are wrong as seldom as they are, considering the marvellous multiplicity of matters, of law and of fact, they must deal with daily.

Not every sale of adulterated stuff is punishable by the statute. The sale must be **to the prejudice of the purchaser**. These words, emphasised by black type, were a source of some botheration to the judges at first. Indeed, the Scottish law lords decided one point clean against the ruling of the English judges. That was on the question as to whether a sale to an inspector, or other person who buys simply for analysis, is to "the prejudice" of the purchaser.

If you take the words in their ordinary sense, it seems difficult to see what prejudice or damage is sustained by a man who purchases food, but not to eat, if the food turns out to be inferior to that which he asked for, especially if he did not buy it with his own money. And that was the view taken by the logical minds of the Scottish lords of session. The English judges, not so logical but rather more practical, said, "If you decide that an inspector purchasing only for the purpose of having the food analysed, and with public money, cannot prosecute under this section, you nullify the Act altogether; because private persons will not prosecute—they cannot afford the time or the money." The English judges, therefore, decided that a public officer or other person buying food not for consumption but merely for analysis, is "prejudiced" by being served with an adulterated article. And in order to make the law in Great Britain uniform on the subject, a supplementary Act was passed, upholding the English judges' view, and enacting that it should be no defence to allege that the purchaser having bought merely for analysis was not prejudiced.

The purchaser is prejudiced, in effect, whenever he is served with an article not of the nature, substance, and quality demanded by him. If I ask for whiskey, and you give me whiskey diluted to 40 per cent. below proof, I am prejudiced in law; though probably the whiskey and water is much better for me than proof-strong whiskey would be. If I ask for pure coffee, and you give me coffee with a little chicory in it, I am prejudiced in law; though a beverage can be made from the second of even better flavour than that made from the first. Nor does it matter whether the purchaser gets something as good as that which he ordered, if he does not get exactly what he ordered. For he is prejudiced if he asks for and pays for one thing and has another foisted on him. The only exception is when a purchaser asks for an inferior article and gets a superior one—as if he asks for margarine and has first quality butter given to him instead.

What was the article sold as? is another way of putting it. If, as in one case, a man sells a pint of milk for a penny, saying it is new milk, it does not avail him afterwards to say, "The purchaser must have known it was not new milk; because in this town new milk is never sold for less than 2d. a pint." The answer is, "You should not have called it new milk." On the other hand, if, before or at the time the article is being sold, the seller tells the purchaser what it really is, there is no offence. Thus, if one has a parcel of stuff in his shop looking like and labelled "Lard," and someone comes in and says, "What is that?" and you say, "Lard," and he says, "A pound of it, please," and then while you are weighing it you say, "It is really lard mixed with beef fat," the purchaser cannot summon you for selling adulterated lard, because you told him of the mixture before you actually sold it to him.

As to *who is the purchaser*, it is enough to say that the person by or for whom the article is bought is the purchaser. Thus, if I give my servant half-a-crown with orders to buy a pound of tea with it, I, and not my servant, am the purchaser of the tea. So if an inspector sends a decoy, or

"mark," to make a purchase from a suspected tradesman, the inspector is the purchaser and can prosecute for adulteration.

If you refer to the statute you will see that adulteration may be as to the "**nature, substance, and quality.**" This means nature *or* substance *or* quality; for if you sell an article inferior in any of these three respects to the article asked for by the purchaser you are liable to be convicted. To put it in another way, you must not sell any article except

- (a) the genuine article—that is, the article known in commerce as the article demanded; and
- (b) it must come up to the recognised standard if there is one.

Now it follows that where a purchaser receives a genuine article, he cannot complain of the quality, though the quality be low, unless there is some well-recognised standard. And on that ground in a Scotch case a milk dealer was acquitted who, being asked for cream, sold genuine cream, though of a lower quality than the analyst thought proper. If the Glasgow milkman had added or subtracted anything, he would have been fined; but he was held guiltless because his alleged offence was merely that of selling cream inferior in quality to the cream usually sold in Glasgow. In the section of the next chapter devoted to Milk I have something to say about the Board of Agriculture milk standard.

But except for milk—and at some future time, maybe, for cream, butter, and cheese—there is no food, that I know of, which has an **absolute fixed standard**. Analytical chemists have from time to time tried to fix a standard, but have only been partially successful.

In the case of drugs, however, there is a well-recognised standard—the *British Pharmacopœia*; and all chemists and druggists are expected to sell drugs up to the standard of the *British Pharmacopœia*. Many druggists kicked at this, at one time; and even quite recently I have heard it contended that the *Pharmacopœia* was not the standard. But it is too late to say that now. Lord Chief Justice Coleridge and Sir A. L. Smith decided the question as long ago as 1887, when a chemist named Bywater was convicted by them—or, rather, was ordered by them to be convicted—of selling adulterated tincture of opium. "Tincture," in ordinary language, merely indicates a solution of a drug. But "tincture of something" in medical language means a tincture of something prepared in a particular way. One White, an inspector, had bought from Bywater some tincture of opium, which, on analysis, was found to contain only 2·3 per cent. of opium and 97·7 per cent. of alcohol. Now the *Pharmacopœia* says that tincture of opium shall contain 7·5 per cent. of opium and 92·5 per cent. of alcohol. Still, the tincture supplied undoubtedly was tincture of opium; though of less strength than the *Pharmacopœia*'s prescription.

And when the chemist was summoned, he said, "I was asked for tincture of opium and I supplied tincture of opium. Had I been asked for tincture prepared according to the standard of the *British Pharmacopœia* I should have supplied it. But I was not asked"—which, on the analogy

of the Glasgow case, where cream of poor quality, but still cream, was held good, seemed highly reasonable. But Mr. Bywater forgot something. He forgot that in those days there was no recognised standard for cream, while there was a standard for drugs. The *British Pharmacopœia* was compiled for this reason:—A physician, when he prescribes, has it in his mind to administer to the patient a certain amount of a particular drug. Suppose he writes out in his professional hieroglyphics, "Tinc. op. ʒiij" (meaning thereby tincture of opium so much), he intends you to take that quantity of tincture for the sake of the percentage of opium dissolved therein. Now suppose this kind of thing happened—as it used to happen—that you took the prescription to Mr. Bolus, a druggist, whose tincture contained 30 per cent. of opium, you would be getting more opium than the doctor meant you to have. If, on the other hand, you took it to Mr. Dolus, he might use a tincture containing 20 per cent. of opium. Then you might be getting less than the physician meant you to have.

Therefore the medical profession compiled a list of drugs, which all chemists are to use in making up prescriptions; and all the tinctures, etc., are accurately set forth in their due proportions. Thus, all chemists using drugs of the same strength, a medical man can prescribe with greater confidence and accuracy; for he may rest assured that the chemist who mixes the physic will not put into the bottle a grain more or less of a potent drug than is intended to be given to the patient. Some druggists, however, contended that although they ought to use the standard of the *British Pharmacopœia* in making up prescriptions, yet they were not bound to do so in selling the drugs by themselves. But the judges would not have this dangerous doctrine. "The tincture of opium known to commerce is that according to the standard of the *British Pharmacopœia*; and if I ask for tincture of opium I expect to get the tincture known to commerce. Now this was not the tincture of opium of commerce, but an inferior article." Such is a summary of Sir A. L. Smith's decision.

I do not know whether the imposing upon them of the *Pharmacopœia* standard is regarded by retail druggists as a hardship. Personally, I should have thought it an advantage. The poor grocer who sells cocoa and coffee and butter may be "potted" and fined £20 by a magistrate in Birmingham for selling something for which a magistrate in Manchester would let him off. The standard of foods (except of milk) depends a good deal upon the length of the foot of the local public analyst. One analyst will fix it so high that only very good quality goods will reach it. Another will have a standard 25 per cent. lower. But the druggist knows what to expect. His standard does not depend on the views or fads of an analyst. What will pass at Penzance will pass also at Inverness. So that it seems as if the interests of the trade and the public for once coincide.

A much more recent case goes quite as far as the one just described; and, moreover, establishes the point that a man who sells a **compounded drug** which is not up to the standard can be prosecuted either for selling

a compounded drug not compounded as the Act requires, or for selling "a drug not of the nature, substance, and quality demanded." It befell that on the 14th of May, 1900, Mr. Randerson, an Inspector of Food and Drugs for the West Riding of Yorkshire, went to Taylor's Drug Stores at Skipton. The manager of this establishment was one Dickins, a certified chemist; and when the inspector asked for "two ounces of mercury ointment," Dickins gave him a box of ointment labelled "The Ointment—Mercurial Poison." "The Ointment" was in print. "Mercurial Poison" was written. A bill in these terms, "Mercurial Ointment, 4d.," was also handed with the goods. Randerson paid the fourpence, took the ointment, and had it analysed. It was found to contain 12·5 per cent. of mercury and 87·5 per cent. of unguent, a mixture of lard and suet. Now the *British Pharmacopæia* says that mercurial ointment consists of 48·5 of mercury to 51·15 of fat. Wherefore Dickins was summoned for selling a drug not of the quality demanded.

Randerson admitted that he only asked for "mercury ointment"; that he did not say he wanted it compounded as prescribed by the *Pharmacopæia*; that the ingredients were right, but not the quantities or proportions. He did not complain of imposition, or that the ointment given to him was injurious. He merely contended that "mercury ointment" meant that substance called "mercurial ointment" by the *Pharmacopæia*.

Dickins said this diluted ointment was sold by retail chemists everywhere. He himself had sold hundreds of boxes. The strong, or standard, ointment was very poisonous, and not fitted for unskilled persons to use. He, therefore, never supplied it except when making up the prescription of a medical practitioner. Two chemists of thirty-five and twenty-seven years' standing gave similar evidence. Dickins further stated that he kept both the dilute and the standard kinds in stock, and would have supplied the standard if he had been specially asked for it. He argued that by the custom of the trade, "mercury ointment" meant the weak variety—not the *Pharmacopæia* sort. Further, he said, "You ought to have summoned me for selling a compounded drug not properly compounded, and not for 'selling a drug not of the nature, etc., demanded.' In fact," said he, "this is not what the Act calls a 'drug'—it is what the Act calls a 'compounded drug.'"

A very learned judgment was delivered by Mr. Justice Phillimore. He laid it down as a rule from which there could hardly be an exception that the *Pharmacopæia* standard must be adhered to, and is *the* standard for drugs. As for the keeping of two kinds, both of which were called by the same name, "mercury ointment," "he might as well," said the learned judge, "have kept two weights and two measures." He ought, if he thought there was danger in the use of the stronger kind by unskilled persons, to have the weaker kind labelled "Diluted Mercury Ointment"; and recommend its use to anyone whom he thought unskilled and likely to use the proper drug in a dangerous manner. You cannot have two things and say they are both of the commercial standard, unless you sell them under different names. As to

the "compounded" drug point, "A compounded drug is none the less a drug," said the learned judge.

This case may, I think, be fairly taken as conclusive. It was fought at great length and with great skill by able counsel on both sides; and the judgment was not delivered off-hand, but was carefully considered for several days by Mr. Justice Bruce and Mr. Justice Phillimore. Mr. Justice Bruce concurred with his learned brother's decision.

It comes to this, then: that **a chemist must label his diluted drugs** if they are drugs mentioned in the *British Pharmacopœia*. If he fails to do so, and fails by the labels to indicate that the drugs are diluted, he will run the perpetual risk of a prosecution, just as a grocer who sells coffee-and-chicory as coffee, and without a label, runs the risk of a prosecution.

Publicans and brewers are not so fortunate (or unfortunate) with regard to the **standard of beer**. Until very recent times, when there have been prosecutions in respect of arsenic found in beer, most beer adulteration cases have been for **adding salt**. From some reports of cases that have been heard, it seems to me that some beer-drinkers—or, rather, the drinkers of some beers—must be thirstier after they set the pot down than when they took it up. Between 90 and 100 grains of common salt to the gallon have been found. Sometimes this means that the brewer or the publican has deliberately salted his beer. There was one case where the publican brewed his own ale, and nearly 100 grains of salt were found to the gallon. The gentleman admitted that he put one farthing's-worth of salt into 115 gallons when brewing. He said that was how he was taught to brew! But because salt is found in beer, it does not follow that salt was put in. Please do not laugh. It is a fact that if you use sugar in brewing you are liable to have salt beer—and you may be fined for it, too. And sometimes the water used in brewing may account for it. Some water contains a great deal of salt—well-water, I mean; for salt is in the earth, everywhere, and is bound to get into the water. Thirty grains to the gallon in fresh well-water has been known. Twenty grains is not uncommon; and twelve grains is quite usual. Now, if you get water containing twenty grains of salt when fresh, it will probably give twenty-four grains after brewing. Because part of the liquid of the water goes away in steam, leaving the solids—such as salt, lime, and chalk—behind. Moreover, there is salt in most other products of the earth (sugar, for instance, and hops), and what with refining syrups, and one thing and another, you cannot possibly get beer without some salt in it. But this varies with the water used.

The consequence is that the seller of beer does not quite know where he is. An analyst will take a sample of his beer, and summon him for selling an article "not of the nature, substance, and quality"; by reason of the presence of ninety-eight grains of salt (chloride of sodium is its scientific name) to the gallon. And if the publican gets off he can consider himself lucky. If the magistrates think he (or the brewer) has added salt fraudulently, to increase thirst, even if he added it by using some brewing

material in excess, there will be a conviction. If he has actually put salt in—even one farthing's-worth to the 115 gallons—he will probably be fined, even if he did it *bonâ fide*. But if he can prove that the salt comes there in such an excessive quantity owing to the natural character of the water used, he will get off. I once had a glass of ale, in London, that was probably brewed from sea-water. This is not lawful.

Who does not remember the thrill of horror that ran through the beer-drinkers of England when certain chemists and doctors in Lancashire announced that they had traced the cause of some mysterious deaths to **arsenical poisoning by drinking beer?** Many was the grim joke cracked. I am told that many working-men used to go into public-houses and ask gravely for “a pint of arsenic.” There was a great public outcry, a public inquiry, and a perfect epidemic of “arsenic in beer” prosecutions all over the country. Then it appeared that to the Western form of invitation, “What’s your pison?” the Englishman might with perfect truth have answered, “Beer!” From the scare a certain amount of law emerged, for the guidance of brewers and those who deal in ales and beers; amongst other things, that any publican who sells arsenicated beer, though he knows not of the arsenic, can be convicted for selling beer not of the nature, etc., demanded.

It was once decided by a stipendiary magistrate at Stoke-upon-Trent that it was no offence to sell to the purchaser **something entirely different from the article demanded!** It is a little difficult to believe that such a decision could be given; but it is the fact. And it befell thus:—There was at Longton, in Staffordshire, a herbalist named Samuel Bowers, who sold herb-physics, after the manner of his kind. He may have been a very learned man, for aught I know to the contrary. But the local authorities had their eye on him. One day there entered his shop a woman named Onions, who asked for threepennyworth of saffron. She did not say what she wanted it for; in fact, she did not want to use it for medicine, but had been sent by a food and drugs inspector to procure the saffron as a sample for analysis. Having got her threepennyworth, she told Mr. Bowers her purpose in buying the drug, and divided the sample as the Act requires.

Now when the sample came to be analysed, it proved to be not saffron at all, but “savin”—as, indeed, any pharmaceutical chemist could have told at first sight. For saffron is (in botanical language) the stigmas of *Crocus sativus*, while “savin” is the young shoots of the *Juniperus sabina*. Both drugs are used by doctors, and both are in the *British Pharmacopœia*. Saffron is used either as a colouring agent, to make your physic look nicer than it tastes, or as a medicine for cases of measles. “Savin” has also its uses in certain female complaints, and is sometimes used by unscrupulous people in preparing a decoction for procuring abortion. Mr. Bowers may, as far as I know, be living and practising yet, and I do not want to take away his character. Wherefore let it be most distinctly understood that the “savin” sold was pure “savin,” and that there was not a grain of evidence to show that the herbalist supplied it for any unlawful purpose.

When the summons for supplying a drug not of the nature, substance, and quality demanded was heard by the stipendiary magistrate, that learned gentleman, on hearing that the drug sold was a pure drug of its kind, though not of the kind demanded by Mrs. Onions, acquitted the herbalist. A most curious finding. He got at it this way:—The preamble of the Act says that the law regarding the sale of drugs “in a pure and genuine condition” required amendment, therefore be it enacted, etc. etc. “I find,” said the learned magistrate, “that the drug sold in this case was ‘pure and genuine.’ Therefore I refuse to find the defendant guilty of adulteration.” The local authorities lost no time in appealing, and were fortunate enough to have the appeal heard by a strong Court—Sir James Mathew and Sir A. L. Smith. The learned judges made short work of the Stoke-upon-Trent stipendiary. They said: (1) The learned magistrate ought not to have paid attention to the preamble when he had plain words in the body of the Act to guide him. (2) Even so, he has wrongly construed the preamble, for how can “savin” be “genuine” saffron? (3) When Mrs. Onions asked for saffron she asked for something in the “nature” of saffron (this seems rather obvious). She demanded the “stigmas of *Crocus sativus*.” She was given something of a different nature altogether, namely, the shoots of a different shrub. How in the world, then, could it be said that she did not get something not “of the nature, substance, or quality of the article demanded”? If the Stoke magistrate had been right, imagine the consequences! You ask for butter, and the grocer gives you lard. You pay eighteenpence and get something worth tenpence. Then when you summon him he says, “My dear sir, what I supplied you with was a pure and genuine article.” “All very fine,” you reply; “but when I ask for pure and genuine butter I don’t want pure and genuine lard. I ask for the produce of the cow; you give me the produce of the hog! Thank you for nothing.”

You see, therefore, that the **Food and Drugs Acts are not confined to adulteration only**. If they were, Mr. Bowers, the herbalist, would have got off clean. For he did not adulterate his “savin,” he merely sold it for something it was not. And in the same way, just as a tradesman may be convicted for selling a pure article, unadulterated, if it is not what is asked for; so, too, a tradesman may escape, even if he has sold an article adulterated in the ordinary sense of the word—that is, when the article supplied is not the pure article that was asked for. Which brings us to the question of

“PRESERVATIVES” IN FOOD.

If you turn back to p. 1146, and look at the proviso (1) appended to section 6, and also proviso (4), you will see what I mean. It is the first of these that comes up for consideration at this moment.

It is quite lawful to add a preservative of a harmless character to food that is liable to go bad quickly. For example, you may add preservatives to milk, butter, and bacon, all of which are very likely to turn bad in the course of an hour or two. **But you must take care that the preservative is**

not injurious to health. That is always the point. For there are many preparations in the market—preparations going under various names, and some registered under trade marks—that will preserve food from decay, but will injure the health of the eater. There are some, also, that are useful and harmless if used in proper quantities, but harmful—or at least risky—if used in greater quantities.

You should never use a preservative unnecessarily, because if you do you run the risk of a conviction; for by the statute a preservative is only lawful where it is necessary “for the production or preparation of the food as an article of commerce, in a state fit for carriage or consumption.” In the case of milk and cream preservatives are generally added to keep the milk fresh during carriage. It may be taken for granted that milk could never be brought to London and many other large towns in the summer in quantities sufficient to supply the demand unless something were done to it to make it keep. For milk sent from Dorset to London, from Wales to Birmingham, from Wensleydale to Leeds, would be sour long before it reached its destination were it put into churns or cans just as taken from the cow and despatched forthwith. Some milk-farmers have a method of cooling the milk to a very low temperature by putting it in a cold-water bath. The milk is poured into a metal trough, which is set in a larger trough, and cold water is kept running in the larger trough. This soon cools the trough containing the milk and the milk also, and the milk is then much more fit to stand the journey from Somerset to Paddington than it would otherwise be. Cleanliness in the dairy, the milking-shed, and the farm generally has also a great deal to say as to the length of time milk will keep sweet. Dirt in the milk soon sets up decomposition.

But when all is said and done, many dairy-farmers place their trust in **antiseptic preservatives.** *Those in use in milk*, as far as I know, are carbonate and bicarbonate of soda, boric acid (commonly called boracic acid), salicylic acid, and “formalin,” or formaldehyde. Of these the last three are the most in use, and there is great conflict of opinion among analysts and doctors as to the effect of them. A great deal of evidence was taken by a Parliamentary Committee in 1896, and their report on the subject is as follows: “In order to preserve milk, boracic and salicylic acids are sometimes mixed with it, and your committee have received evidence to the effect that the use of these antiseptics is not only unobjectionable, but has proved advantageous both to farmers and milk sellers. Some evidence to a contrary effect has been submitted.” From which it is evident that a strong committee of the House of Commons was disposed to permit the continued use of boracic and salicylic acids as being “unobjectionable” to the consumer and beneficial to the trader.

Two very eminent writers on Food Analysis, Dr. Winter Blyth, of Marylebone, and Mr. Allen, of Sheffield, hold slightly different views on this subject. Dr. Winter Blyth would stop the use of antiseptic preservatives because he thinks they encourage dirt in the dairy. Mr. Allen “deprecates” the use of them chiefly because not much is known about their physiological

effects. According to Mr. Allen's book—one that I have found very useful in such cases—the two most efficient preservatives of milk are "formalin" and "glacialin." The former is formaldehyde dissolved in alcohol; and the latter is a powder, a mixture in certain proportions of boric acid and borax—a mixture that is much better than pure boric acid. Of the effects of formaldehyde on the system when absorbed into it there is little known. Probably more will be found out some day. But as to boric acid, though many analysts seem to think that they object to its presence in food as injurious to health, yet the medical profession, as a whole, is not so much opposed to it. I once heard a great surgeon say, "It's the analysts who have raised all this bother about boracic acid. We [that is, the medical men] do not find it hurtful, except in very large doses." And as far as I can see, if a farmer or milkman uses glacialin according to the directions on the packet, he will be pretty safe. But I wish to warn you—*do not throw the powder into the milk*. See that you melt it as directed. And, secondly, *use the right quantity*. No doubt the powder is compounded on scientific principles, and contains just the right amounts of boric acid and borax to preserve your milk until it is consumed. There is no use in putting in an excessive quantity; and you may fall upon the fate of a farmer I read of not long ago, who fought the Birmingham sanitary authority. He would have got clean off if he had used the glacialin in the right way; but he simply threw a quantity of it into his milk, never stirred it up, and it all settled at the bottom. And the food inspector took the very last pint as a sample. The magistrates found, after a great fight, that too much boracic acid was in the milk. Now all that is necessary is .05 per cent. to a gallon—that is, in the proportion of 1 : 2,000. If you stick to that, which is the quantity used if used as per directions, you are not likely to be summoned. If you are summoned, you will not find many magistrates bold enough to convict you. And if you use the powder in excessive quantities, or not according to directions, you are very silly to give a (possibly faddy) analyst a handle. This .05 per cent. of glacialin works out at 35 grains of boric acid to the gallon of milk; and it has been known to keep milk sweet for eight days, according to experiments by R. T. Thomson.

I do not advise you to use salicylic acid, or benzoine, or raw borax or boracic acid. A little salt—a mere pinch—dissolved in water will keep the milk sweet for a time. Salicylic acid alters the taste of milk, imparting to the milk a peculiarly sweet taste. This sweetness becomes more and more noticeable until the milk actually turns sour. Glacialin and formalin, on the contrary, have no taste, and do not make the milk taste.

Boracic acid is used not only for milk preservation, but for many other articles of food as well, notably butter, bacon, sausages, ham; and, indeed, any animal food that is liable to quick decomposition. As in the case of milk, it is much better to use glacialin, and use it in the manner directed on the packet, than to use raw boracic acid or borax. If, however, you cannot get glacialin in time, and are bound to use borax, you should dissolve a very little of it in a teacupful of water and use the solution. Never use the powder undissolved.

Proprietary medicines are excluded from the operation of the Acts by sub-section (2) (*see* p. 1147). Therefore if you adulterate a proprietary medicine or a food which is called a proprietary medicine, you can only be proceeded against under the Common Law or under the Merchandise Marks Act.

Sub-section (3) of the same section (*see* p. 1147) is *quite superfluous*; and I need not, therefore, waste my space or your time in commenting on it.

We now come to the fourth exception, or defence, in a prosecution for supplying an article of food or a drug "not of the nature, substance, and quality demanded." It is no adulteration, **no offence if the article is unavoidably mixed with extraneous matter in the course of collection or preparation.** Be good enough to notice the word "unavoidably." It is the keynote. Its practical effect is that although it may be proved that owing to the method of production or collection a certain amount of foreign matter is bound to get into the article, yet where there is more than is usually found in that article the excess is not unavoidable and the seller is guilty of adulteration.

For example, the best *pepper* is almost bound to have some sand in it. As much as 5 per cent. may easily get mixed up with the pepper without anybody being to blame, or even $5\frac{1}{4}$ per cent. But if there is as much as $5\frac{1}{2}$ instead of $5\frac{1}{4}$ per cent., the seller will have a hard fight to escape conviction. Ten per cent. is pretty certain to convict; though the Cardiff Bench once acquitted a grocer when his sample contained this amount. The general opinion is, however, that the Bench was wrong. *Caper tea* with 3·5 per cent. of foreign matter—mineral—was held not to be adulterated, because owing to the method of production that amount was unavoidable. The superior Court in Edinburgh once acquitted a man who sold *buttermilk* containing 30 per cent. of added water. The milkman's witnesses swore that the amount was unavoidable. Some water is certainly necessary to be added in the process of manufacturing the butter; and the amount thereof varies according to the temperature and other considerations.

Recommendations of the Departmental Committee.—Since the above matter was written the Departmental Committee, appointed in 1899 to inquire into the use of preservatives and colouring matter in food, has reported. Their recommendations are: That the use of formaldehyde or formalin, or preparations thereof, in foods or drugs be absolutely prohibited. That salicylic acid be allowed up to one grain per pint in liquid food, and one grain per pound in solid. The next recommendation is very stringent. It is that no preservative colouring matter be allowed to be used for milk. That 0·25 per cent. of boracic acid (which may be a mixture of boric acid and borax) be allowed to be used in cream; and that the amount shall be notified by a label upon the vessel. That the same preservative be allowed to be used in butter and margarine up to 0·5 per cent. That no other preservative be allowed either in cream, butter, or margarine. That all preparations intended for the diet of invalids or infants shall not be allowed to be chemically preserved. No recommendation is made as to the use of boric acid in the preservation of

such substances as bacon. I would remind my readers that although these recommendations have no legal force at present, they may be made of legal effect in the near future. It behoves dairymen and others, therefore, to keep their eyes open.

If I may venture to utter a prophecy, it is that probably boric acid will still be allowed to be used for milk in small quantities, provided that notification is given to the customer. As far as I can read the basis of the conclusions arrived at by the Departmental Commission, it is that boric acid is harmless except to very young children. But that as milk is the common food of infants, and some doctors say that boric acid might hurt them, the use of the preservative should be forbidden for the sake of the health of the rising generation. I ought to add, however, that certain experiments recorded in the report of the Commission, made by Dr. John Tunnicliffe, seemed to point to the fact that a certain amount of boric acid may be put into the milk used even by young children without harmful results.

COMPOUND ARTICLES OF FOOD AND COMPOUNDED DRUGS.

A special section of the Food and Drugs Act, 1875, was passed, intended primarily to deal with druggists and chemists in the making up of prescriptions; but the section was made general in its terms, so as to catch as many as possible in its net. Here it is:—

7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Very few prosecutions have taken place under this section. In all cases, as far as my reading and my imagination carry me, an offence under this section would be an offence under section 6. That is, a man who sold a compounded drug, say mercury ointment, not composed of the ingredients demanded by the purchaser would be liable to prosecution for "selling a drug not of the nature, substance, and quality demanded by the purchaser"; for a compounded drug is a drug none the less because it is compounded.

I would point out that a pharmaceutical chemist is hit by this section if, in making up a doctor's prescription, he uses drugs not of the *Pharmacopœia* standard. He would also be liable under the Pharmacy Act (*see* Chap. IV., Bk. VII.).

A baker, also, might easily be liable. If, for example, somebody gives me a receipt for a cake—the recipe, let us say, prescribes two eggs shall be used to a pound of flour. I take it to a baker, and desire him to make me a cake in accordance with the recipe. He delivers me a cake of sufficiently good flavour, but I afterwards discover he put only one egg in it. I can prosecute him under the above section. He can defend himself only by showing that he gave me a label announcing the alteration, or that he told me at the time he delivered the cake. The baker may have put only one egg in because his experience told him that two would spoil the whole

confection. He may have omitted one egg out of pure absent-mindedness. He may have handed the recipe to a servant, and the servant may be the really guilty party. In fact, he may be quite innocent, and in charging for the cake he may have allowed for only one egg. No matter for that: he is guilty; and if I can prove the fact in question, and he cannot prove notice to me, he is guilty.

He may, however, get off in such a trifling case, where there is no actual fraud, by virtue of the magistrates' power to dismiss a charge which, though technically proved, is yet so trivial in character as to be frivolous.

THE OFFENCE OF ABSTRACTION.

9. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration.

There is no doubt that the legislators who passed this section of the Food and Drugs Act, 1875, were thinking of our friend the milkman; and were trying to secure to the public milk with all its cream in it. But although this stone was slung at the gentleman who enlivens our earliest hours by his "Milk oh!" it is not restricted in its application to him.

As usual, the Act goes for the wholesaler and the retailer. The first part of the section is intended for the wholesale man, because it is directed against *the person who abstracts* with intent that the article be sold without notice in its altered state. Put in plain English, this means that if I skim some of the cream off my milk, intending to sell it as new milk, I am guilty. Merely to give a label is no defence under this section, unless the prosecutor's attention was called to it at the time; but actual notice—by a notice hung up in the shop—is a sufficient protection. Suppose, for instance, I have on my premises butter with some of the butter-fat extracted, the balance being made up with water, and it can be proved that this abstraction was done by me or my servants, I shall probably be convicted of "abstracting with intent to sell without notice," unless it can be proved that some notice of the alteration was conspicuously displayed on the premises.

This part of the section is also used to get at the wholesale man, either when he has given a warranty or when the retailer is not worth going for. I will presently show you how.

The second part of the section is against the person who sells the altered article without disclosure of the alteration. As to what is disclosure sufficient to satisfy the Act, the reader is referred to the Milk section in the next chapter, and especially to Spiers & Pond's case there (*see* Index).

Now let us suppose that Jiles, dairy farmer, supplies to M'Kraw, milk retailer, an article purporting to be new milk. Jiles has, however, been afraid of making M'Kraw's customers over fat, so has removed a little of

the cream. A sample having been duly taken from one of M'Kraw's cans, and found to be short of cream, the local authorities decide to prosecute. If M'Kraw is wise, he will, as soon as he learns that a sample for analysis has been taken, proceed to the office of the Town Council, County Council, or whatever his local authority is, and produce his written warranty, if he has got one; if not, he can at all events try to persuade the Town Clerk or his clerk, or the M.O.H., or whoever has charge of the matter at the time, that he is personally innocent, and that Jiles is the guilty party. Then the local authority can prosecute Jiles for abstraction.

And the kind of person who is hit by the first part of the section is the **servant who makes an abstraction**, though he does not actually sell the milk. Thus Brinks has two servants, Tom and Jerry. Brinks is a cowkeeper who retails his own milk. Tom does the milking of the cows, Jerry goes round with the cart. Tom, in obedience to Brinks's orders, skims some of the cream off a pail of milk. The partly skimmed milk is then mixed with other milk, and sold by Jerry; and in due course a sample is analysed and found wanting. The worthy Brinks can be prosecuted for "selling an article so altered"—that is, weakened by abstraction. Jerry can also be prosecuted; for, as we have said (p. 1151), servant and master both can be hit. And Tom, the man by whose hand the cream was actually removed, can be prosecuted too—not for selling, but for abstracting cream with intent that the milk might be sold without notice of the alteration.

Mind, it is not every abstraction from food that is punishable—only such as are commonly called adulteration. If, for instance, you extract from such an article a part of its constituents in order **to improve the flavour or make the article more easily digestible**, you commit no offence, because the essence of the offence is the injury to the quality, substance, or nature of the food sold. A good instance is cocoa. In addition to the methods previously described of mixing cocoa with arrowroot and sugar, there is another way of treating cocoa. The arrowroot and sugar are mixed with the cocoa in order to kill the natural oil of the cocoa, which amounts to 50 per cent. It is admitted all round that cocoa really pure—that is, with all its oil in it—would not readily dissolve in water, and would make a rather nauseous drink. Wherefore some manufacturers, who do not approve of the arrowroot mixture, adopt the plan of squeezing out a great part of the oil before grinding the cocoa. Cocoa prepared by this method is called "cocoa essence." It is not for me to express any opinion as to the relative merits of the methods. The mixing method retains all the natural fat, a food of great value. On the other hand, your cocoa is not so strong as when the bean is prepared by the abstraction method. What I desire to point out is that cocoa from which only enough of the oil has been pressed to make the finished article easily soluble and rather more palatable does not come within the section.

Instances of the wrongful abstraction of the nature, substance, and quality of articles of food occur in the cases of *ginger* and *caraway seeds*.

It is a common trick for ginger to be sold made of a mixture of genuine ginger and spent ginger. The spent ginger is what is left after stone ginger-beer has been made, or ginger-wine, or cordial. It has half the strength of the genuine article; and it is to be feared that one rarely gets genuine ground ginger, and only very seldom genuine whole ginger. Caraways, again, are largely mixed with spent caraways, whose essence has been extracted to make a certain liqueur. I need hardly say that although spent ginger is, of course, still ginger, and spent caraways are still caraways, it is an offence to sell them without notice that they are spent.

Not only does it not matter one single little bit how the constituent got abstracted, or who abstracted it, but **it does not matter how innocent you were** of the abstraction. You see, the wording of this section is somewhat different from that of section 6. This section says, "no person shall *with intent* that the same shall be sold in its altered state *without notice*, abstract from food any part of it," etc., and "no person shall sell any article so altered without *making disclosure* of the alteration." It might strike the layman, as it once struck Mr. Justice Charles in one of the cases under the section, to ask, "How can a man disclose what he does not know?" The answer is, He must put himself in a position to know. The first part of the section, as to abstracting with intent to sell, applies to the farmer or grower. The second part applies to the retailer. And, although a man cannot be expected to make disclosure of a fact he does not know, yet he can protect himself. Once more let me say it—the Food and Drugs Acts were passed for the benefit of the purchasing public, not of the selling trader. There is a way for the retailer to protect himself. Let him insist on having a written warranty. Then when the retailer is visited by the inspector he can show him the warranty; and the really guilty person can be got at.

Very early on the judges decided that the retailer should not be able to shelter himself behind a mere protestation of innocence, or rather of ignorance. The statute has provided a way by which the retailer can protect himself from the fraud of the grower, or the producer, or the wholesale dealer. That way is fully explained in Section III. (p. 1189). If he does not choose to take the trouble to follow the legal path provided for him, he must expect the fate of Mr. By Ends and the other insincere pilgrims so wonderfully portrayed by Bunyan. If a milk-farmer or wholesale milk-seller will not give a written warranty of the genuineness and purity of his milk, suspect him! If it were I, I should suspect him so much as to say to myself, "This fellow will try to cheat me some day." And, having the fear of the law before my eyes, I should decline to deal with him at any price.

An unfortunate wretch who, though innocent of actual adulteration himself, had been fined £20 and costs, once told me a tale. I said to him, "Why in the world didn't you get a written warranty from the farmer?" "Oh!" said he, "I did ask him for one; but he seemed offended. He asked me if I thought he was going to cheat me; and I couldn't very well say 'Yes,' because I thought he was honest." Alas! there is no more

honesty in Arcady than in Babylon. The country farmer, with his ruddy face, so open and frank-looking, is just as much tempted by the thought of illicit gain as is the veriest sharper in the city of London. We do not hear so much about the countryman as about the city shark, because the one only has the chance to cheat in coppers where the other can swindle in sovereigns. I am convinced that a man will as readily besmirch his character with the black mark of dishonesty for the sake of a penny as for a pound. In your heart, trust your fellow-man; but in business, make him put his name to a paper with the thing written down.

THE OFFENCE OF MIXING INJURIOUS INGREDIENTS.

The two offences previously treated of (selling food or drugs "not of the nature, substance, or quality demanded," and abstracting part of the substance of a food) are offences only against the pocket of the customer. True, in some cases the adulteration or abstraction may affect the health of the consumer; but only in a negative way—that is, a man who drinks a pint of milk *minus* its cream does not derive so much benefit from his drink as if the cream had been there. But there is not necessarily any injury, positive or negative, to the purchaser's health—as in the case of diluted whiskey—which is better for you than full-proof spirit. There are, however, two offences, one in respect of foods, one in respect of drugs, the essence of which is the injury to the customer's health. Let us inquire what happens if a man sells **food that is adulterated so as to be injurious to health**. I do not for the moment say anything about selling or offering for sale as food an article unfit for human food. That is the law that hits the butcher who sells tainted meat, the milkman who sells curdled milk, the jam-maker who makes jam of rotten fruit. Things of this sort come under the purview of "Public Health," not of adulteration; and will be treated of separately, because there are different offences and different Acts of Parliament.

You can see with half an eye what a difference there is between the man who sells you rotten bottled peas—real peas, but rotten—and the man who sells you bottled peas beautifully begreened with sulphate of copper; between the man who sells you beer, genuine but sour, and the other man who sells you beer gently flavoured with arsenic. The former class are not adulterators; the latter are.

This particular branch of the art and science of adulteration consists of **mixing, colouring, staining, or powdering** food with something else **so as to render the article injurious to health**. Are you a wholesale man? Then you offend if you mix, colour, stain, or powder the food injuriously with intent that the same shall be sold. This part of the section hits the actual adulterator—the producer or grower who puts the copper in the peas, the arsenic in the beer. But the section is double-barrelled, as are most of the sections in this Act. It hits the retail man as well; for "no person shall sell any article so mixed, coloured, stained, or powdered." That means the shopkeeper.

There has been a good deal of trouble over the words of this section. In the first place, **what do you mean by "mix"?** It might not occur to the average man that if a man who is drying hops over a fire puts sulphur into the fire, and the sulphurous fumes ascend and get into and change the colour of the hops, that that man had "mixed" the hops with sulphur. Yet it is so—at least, it has been decided by a Court to be mixing within the meaning of the Act. You see, it has to be mixture that is injurious to health, not the ingredient by itself. Suppose a man should mix three things together to form (say) a sauce or condiment. Two of the ingredients are by themselves injurious to health; but the third ingredient has chemical properties that neutralise the noxious qualities of the other two, then the sauce or condiment is not injurious to health.

You will bear in mind that sauces, condiments, and articles not used to be eaten by themselves, but used to be mixed with something else, are now "food" within the meaning of the statutes. This has only been so since January 1st, 1900. Wherefore the grocer must **now be careful what baking-powder he sells.** It did not matter at one time. There was once a grocer at Pontypridd who was hauled up for selling baking-powder which was injurious to health. Baking-powder is employed, as housewives know, in substitution for yeast, to make bread, cakes, and pastry "rise." The process is that the bicarbonate of soda, which is the active constituent in baking-powder, sheds its carbon, which is united with an acid, and forms carbonic acid gas. This gas tries to get out, and in trying to get out forces its way through the dough or paste, thus making it "rise." The union of the carbon with the tartaric acid takes place when the two substances are wetted; and to keep them dry, and to prevent an inconvenient manifestation of carbonic acid gas in grocers' shops and places where they sell baking-powder, a large quantity of some neutral dry substance is added. Ground rice is a favourite. So that baking-powder consists of bicarbonate of soda, an acid, and ground rice; and the best baking-powders generally contain tartaric acid as the second of the three constituents. But there are acids cheaper than tartaric. There is the acid which comes freely from alum. And alum is cheap enough. Wherefore the baking-powder manufacturer who wishes to make a cheap article and undersell his neighbours, can do it by using alum instead of tartaric acid; with the usual result—that what is cheap is also nasty.

Now a grocer of Pontypridd sold some of the cheap and nasty variety—not that he knew what was in it, I dare say—and was duly summoned. He got off because Mr. Justice Hawkins thought baking-powder was not food. But the law has been altered since then; and a man who sold baking-powder with alum in it would probably catch it hot. Ye gods! what risks do we undergo! Death in the pot—death in the oven. Poisons here—microbes and bacilli there.

Alum in your jam tart is pretty bad; but personally I would run the risk of a great deal of it, because I know that unless my diet is restricted to bread, cakes, and pastry, I shall survive. You see, in butchers' meat and

most vegetables there are chemicals that kill the ill-effects of the alum. But I draw the line at copper in my peas. If I ever catch the man who bottled the peas I once ate at a certain Italian restaurant—but I digress. One rascal, I was very glad to find, was caught at a place in Lancashire. His name I forget; and he was found to be selling, in bottles, green peas. Well might they be green, green as the rich Irish pastures in April; for there was in every 1 lb. bottle a quantity of sulphate of copper—no less than three grains to the bottle. This, be it known, is equivalent to eight-tenths of a grain of copper metal. The sulphate of copper had been put in by the manufacturers, as they calmly stated, “to fix or restore the natural colour of the peas.” Now I call that a very cheerful excuse! And the magistrates who tried the case thought so too; and they convicted the seller for selling peas mixed or coloured with sulphate of copper so as to be injurious to health.

In a prosecution for selling food adulterated so as to be injurious to health, **the accused may escape** by proving to the satisfaction of the Court—

- (1) That he did not know of the adulteration; *and*
- (2) That he could not, with reasonable diligence, have obtained that knowledge.

I am omitting here the defence of written warranty, because that applies to all offences under the Act. But I want you to observe one or two things. The first is that it is not for the prosecution to prove that you (the seller) knew you were selling the noxious food when it was noxious. They only prove that you did sell it. *The burden of proving that you did not know is upon you*; and you must prove it to the satisfaction of the justices. You may have some document in your possession that will help you—for instance, a copy of the order you gave, in which you used some expression showing that you had some regard for your customers' health: e.g., “Dear Sir,—Please forward me a gross of bottles (1 lb.) of green peas. Your traveller tells me that the peas are not made to look green by artificial means. If this is so, send them. If not, consider this order cancelled.—Yours truly, Frederick Slick.” Or there may be something in the catalogue of the wholesale house such as “Guaranteed sound and wholesome.” But generally there is not. And in that case there is only your word for it; and there are magistrates who do not hesitate to refuse to be satisfied by a man's bare word when the health of the community—including their own—is at stake. After all, magistrates are only mortal. You would not think it, to hear some of them, but 'tis a fact. And they say, “Gad! This fellow wants to poison people. We shall all be killed if this kind of thing is permitted.” And they think, with a shudder, of the last *plat* they ate at a restaurant, wherein were some very green peas; and forthwith proceed to fine you £50 and costs.

Even if you escape the Scylla of “knowledge of adulteration,” you have to weather Charybdis, which takes the form of the question, “What

hindered you from finding out that your pickled walnuts had copper in them?" For, mark you, it is not enough merely not to know. The law will still lay hold upon you if the justices think you might have found out. "By reasonable diligence," says the statute. And diligence, as I have explained before in *The Family Lawyer*, is the opposite of negligence. Negligence means, practically, not taking care; diligence, therefore, means taking care. A diligent man, in common speech, is a man who works hard. A diligent man in law is a man who takes every reasonable and proper precaution for his own safety and the safety of others. A diligent carman, for instance, is one who drives not on the wrong side of the road, nor urges his horses to a furious pace; who puts the brake on when going down-hill, and does not try to see how near the kerbstone he can drive when turning a corner. And a diligent retailer of food is one who makes every reasonable inquiry to ensure that his goods shall be pure and not unwholesome. Perhaps we can illustrate this by an example. Suppose I am prosecuting you for selling preserved green peas injurious to health by reason of containing sulphate of copper. You go into the box and swear that you did not know of the presence of the poison in the bottle. I should hold up to you some of the peas and ask, "Did it never strike you that these peas were very green indeed?" Suppose you say, "I never looked at them closely." Then I say to the magistrate, "This is a nice diligent fellow! See! He never examined the goods he sold!" If you say simply "No!" then I ask if you examined them closely. If you say "No!" again, you get convicted. If you say "Yes!" I proceed to ask if you did not, on this close inspection, see how very green the peas were. If you say you did not notice it, then I ask the magistrate not to believe you; because the fact is obvious. If you admit that you noticed the extraordinary greenness of the peas, I go on to ask you what steps you took to satisfy yourself as to the cause of this deep colour. You may have a good answer to give to this. You may be able on your oath to say that you made inquiries and were told that the colour was the result of the peas being bottled—or some other thing. But an answer you must give.

A conviction under the statute for adding an injurious ingredient is a serious matter—much more serious than for selling an adulterated article—*i.e.* one not of the nature, substance, and quality demanded. The penalty is a fine of **£50 for the first offence, and imprisonment for the second** without the option of a fine. The imprisonment may be for not more than six months, with or without hard labour. And I beg to inform those who do not know, that this offence is one magistrates generally deal severely with. If you come to think of it, it is a serious matter to sell food adulterated so as to be injurious to health. Wherefore magistrates and sheriffs deal out their sentences rigorously and sternly. Most of them inflict the full fine (£50) for the first offence, and rarely less than a month's gaol for the second—sometimes the whole six months with hard labour.

Let me here tell my readers something of **how the Food and Drugs Acts are worked** by the authorities in some places. A milk-dealer sells

milk containing, say, boracic acid or formalin, or bacon which has been partly cured by adding a little boracic acid. (The general public may have recognised that bacon is not now so salt as it used to be. This is largely owing to the use of boracic acid instead of large quantities of salt as a preservative.) The public analyst in the Medical Office of Health in that district may be a gentleman who has set his face against "chemical preservatives," as I have heard them called. By the way, salt is a chemical preservative! He therefore directs a summons to be taken out. Now he can take out a summons under section 3 of the Act of 1875, or under section 6 of the same Act. If under section 3, you will be charged with selling an article of food mixed with an ingredient injurious to health. If under section 6, you will simply be charged with selling an article not of the nature, substance, and quality demanded—that is, not milk, but milk *plus* formalin; or not bacon, but bacon *plus* boracic acid. Now in one way it is better for you to be summoned under section 6, because if you are convicted the penalty is lighter (*see* p. 1146) under section 6 than under section 3 (*see* p. 1172). But in another way it is much worse to be accused of the milder offence—to wit, there is more chance of being convicted.

For when you are charged with selling an article injurious to health, the rule applies that **he who alleges must prove**. In other words, the prosecution must affirmatively show that the article is injurious to health, because that is what they charge you with. Therefore in the cases put in the last paragraph they would have to call medical and scientific witnesses to show that the formalin or boracic acid mixed with milk or bacon in the quantities found would injure, or be likely to injure, the health of the consumer. And then you can call other evidence—for most doctors and many chemists have no objection to either formalin or boracic acid in small quantities, so that evidence will be easy to get—to disagree with the scientific and medical gentlemen on the other side. And you will almost certainly get off. Because the magistrates will say, "Before we can find this man guilty, it must be proved that formalin in milk and boracic acid in bacon in moderate quantities are injurious to health. How can we say it is proved when so many eminent doctors say it is not injurious?"

I have often pitied honest, but none too bright justices of the peace in cases like this. The prosecuting solicitor opens his batteries. He reads out the analysis—finally coming to "boric acid, 15 grains to the pound." Then he pauses impressively, and says, "I shall call the public analyst. I shall call Doctor Spanker, of London, the eminent medical authority, and you will hear his views." Public analyst steps into the box; produces his report of analysis: "Boric acid equal to 15 grains in the pound of bacon." This is said solemnly, as one would say, "I caught the villain. He thought to escape me; but I caught him. And now I expose him to the horrified gaze of this Bench." Their worships begin to look solemn. Some of them, perhaps, have never heard of boric acid before. Then the analyst, being asked if he considers boric acid injurious to health, says, "Yes!" in the emphatic way peculiar to fanatics, whether they be religious or scientific.

Their worships look very grave. Analyst cross-examined, but sticks to his guns.

Then Doctor Spanker, the celebrated London specialist, steps into the box. His name is Theocritus John Spanker. He is F.R.S., F.R.C.S., M.R.C.P., M.D., and about half an alphabet besides. He is also the author of a work—he shrugs deprecatingly when the solicitor suggests “celebrated work”—on “The Action of Nitrogenous Foods on the Larynx.” Their worships examine the celebrated one with some curiosity and not a little awe. The celebrated one loftily ignores their attentions; is asked his opinion of boric acid in food. “I—er—I consider boric acid injurious to health. Most injurious.” At this point the Bench look at the unfortunate bacon-seller with horror; as if they would like to hang him by the neck until he was dead—and the Lord have mercy on his soul. One of their worships, perhaps, is the squire of the village whence cometh the unfortunate man. He knows the man—always thought him decent in his way—certainly never thought a man like that would deliberately try to poison the whole parish.

But listen! Another lawyer is on his legs. The great Spanker is under cross-examination. Cross-examination! the fan that winnows the grain of exactitude from the chaff of exaggeration. Doctor Spanker has a large practice? Admitted with cheerful resignation by the doctor. How many cases has he treated for the effects of boric acid taken in food? Oh! er—a—er—um—well—cannot remember one in which the symptoms were actually and certainly traceable to er—er—! Can the doctor point to any instance recorded in a medical work of such a case? Doctor cannot from memory. Can he swear that there is any such case recorded? Would not like to swear it. Is he aware that boric acid has been used in food such as milk, butter, and bacon for a considerable time? He is. Does he not think it likely that if it had been deleterious, many cases would have been on record in the *Lancet*, the *British Medical Journal*, of sickness traceable to the acid? Not necessarily. But probably? Well, he will say possibly. Lawyer says he will take possibly. Their worships begin to have less awe of the great man. Also regard the poor grocer with less of horror. One of them plucks up courage to ask a question—What does the doctor say is the harm done by boracic acid in food? Doctor considers it injurious to use chemicals or drugs in food. Boric acid is a poison! Their worships begin to look uncomfortable again. But the lawyer fastens on the witness again. Isn’t common salt a poison? It is. Chairman of Bench mutters “Good heavens!” Lawyer invites witness to say that it is a matter of degree—a matter of how much. Doctor is coy at first, but yields to pressure. Yes; a leetle—very, very leetle—boracic acid might be harmless. Will not swear at what point injuriousness begins. Half a grain to the pound could not hurt anybody; nor a grain, nor two grains, nor five. Declines to say whether ten would or not. Is positive in his own mind—he has a very strong opinion—that fifteen grains to the pound is very bad. If a man took fifteen grains into his system he, Spanker, would not like to answer for the consequences. Does he know anyone who eats a pound of bacon at one time? No, can’t say he does.

The defendant's lawyer then begins to call witnesses. The eminent Doctor Whanks, F.R.C.S., lecturer on Toxicology at St. Chrysostom's Hospital, etc. etc. etc., declares that even if fifteen grains were swallowed at a meal the patient—he means the eater—would be none the worse for it. Considers boracic acid useful as a preservative, and in no way injurious. It is used in medicine. Is a good germ-killer. Has heard that it acts, in large doses, on the kidneys. Absurd to call it “poison” in the sense that strychnine is called “poison.” Cross-examined, eminent Whanks admits that he knows very little about boric acid. Excuses himself by saying that nobody else knows anything either. Magistrates acquit the accused, saying they cannot take it upon themselves to say that boric acid is injurious to health.

I remember once conducting a cross-examination very like the one I have sketched of Doctor Spanker ; and I do not know which was the more amusing—the initial positiveness and subsequent “hedging” of the great man or the visible decline of the justices' faith in him as the cross-examination proceeded. The only disadvantage the tradesman suffers under is that he cannot, as a rule, afford to call eminent scientific men as witnesses, unless he belongs to some trade association that will take up the case for him.

Now let us see **what happens if you are prosecuted under section 6**; *i.e.* for selling an article not of the nature, substance, and quality demanded. It is then only necessary for the prosecution to prove the presence of boric acid or formaldehyde in the food, and that this substance is not one of the natural constituents of the article. They need not prove that it is injurious to health. *It is for you to prove that it is not injurious to health*, and was added as a preservative. If you have no evidence ready, you will be convicted. The presumption is against you, and you must prove the presumption to be unfounded. In the other case (under section 3) it was for the prosecution to prove a positive proposition ; that is, that boric acid fifteen grains to the pound of bacon is injurious to the health of the consumer. In this case (section 6) it is for the shopkeeper to prove boric acid fifteen grains to the pound of bacon is not injurious to the health of the consumer. In actual practice it means that in the former case the shopkeeper has twice the chance of escaping conviction that he has in the latter case. Indeed, on this account it is only in the most flagrant cases that people are prosecuted under the more severe section of the statute. The sanitary authorities generally prefer to make sure of a conviction—or, rather, to take proceedings in such form as to be likely to obtain a conviction—instead of playing for a bigger punishment to the offender.

Take the supposititious case I have set before you above. I do not hesitate to say that no bench of magistrates would or could convict you under section 3 on the evidence there. They could only say to the prosecution, “You have to convince us this ingredient makes the food injurious to health. You have not convinced us. We are not certain one way or the other. Therefore you have failed to prove your case.” But I can imagine a bench of magistrates taking another view if the prosecution were under section 6, and you had set up the defence that the mixture was a

preservative not injurious to health. I can imagine them, in the face of conflicting evidence, saying this: "It is proved—nay, it is admitted—that a foreign substance is present in this food. Under this section it is the defendant's duty to convince us that it is not injurious to health. He has not convinced us. We are not certain one way or the other. We cannot say it is injurious; neither can we say it is not. And as we are not convinced, we must convict of adulteration." In the state of medical knowledge as it is at present, magistrates do not very readily convict if formalin or glacialin are used in proper quantities in a proper manner; but—and I cannot repeat this too often—beware of excess.

COMMON ADULTERATIONS.

Butter is a subject very difficult to decide on as to quality. Just as there are high-grade milks and low-grade milks, so there are high-grade butters and low-grade butters. The main constituent of butter is fatty acid, of which about $\frac{9}{10}$ ths are "fixed" and $\frac{1}{10}$ th is soluble. The fixed fatty acids are so variable as to differ to the extent of 5 per cent. in different genuine butters. And the soluble fatty acids also vary very much. The milk of some cows, when the feeding is good, will yield a butter containing 90 per cent. of fixed fatty acid. The same cow's milk, under different circumstances of feeding and climate, will only yield 86 or 87 per cent.

Leaving out the palming off of margarine as butter, there are *three chief ways of adulterating butter*. The first is by *adding fat*. This is a kind of adulteration most difficult to detect. In fact, if the butter is of good quality, and the fat of good quality, provided the mixing has been judiciously done, the analyst is practically powerless. And this helplessness is by no means due to their want of skill as chemists, but to the fact that the chemical composition of the mixture is the same as that of butter. It should be said that this method of adulteration is comparatively harmless to the consumer; though, of course, it is cheating in a very bad form. There is no harm in colouring butter with, say, "carrotin," or other vegetable colouring matter not injurious to health. You should avoid mineral colourings, however, as these are apt to be dangerous.

But there is another form of adulteration much more fraudulent. Luckily it is easier of detection. I mean *the addition of water or milk to butter*. This is a trick calculated to defraud the purchaser enormously. The dodge is for the butterman to take a keg of, say, Irish butter, and cut it into lumps. Then he takes water or skimmed milk, puts a lump of butter into it, and kneads away until the butter has absorbed the greater part of the liquid. As a result, the weight is enormously increased, and the purchaser correspondingly defrauded. There is always more or less water in butter—more if the butter is badly made, less if it is skilfully made. And it is no offence to sell a butter that is genuine, though of poor quality. Butter of the best quality contains in all about 87·5 per cent. of fat, and 8·5 per cent. of water, leaving a little over 2 per cent. of casein and rather more of ash. The ash is chiefly salt. On the other hand, there are butters of undoubted genuineness which contain

only about 78 per cent. of fat, and nearly 19 per cent. of water. In addition, there is Irish salt butter, and this contains as much as 21 to 22 per cent. of water very often. Thanks to the improved education of the Irish farmers, best Irish butter is now much better than it used to be, and will compare favourably with any other. But Irish salt butter is still very watery. The reason is that this class of butter is made in the summer and autumn, and is intended to be kept for winter use. And with the object of preserving it for a long time a great deal of salt is added.

Now this salt is added, not in a dry form, but in a wet form. The salt is dissolved in water, and the brine—often heated—is poured amongst the butter and mixed with it. Thus you get not only a very salt butter, but a very wet butter; and though you may buy it at a very cheap rate, there is really no more genuine butter for the money than there is in the more expensive kinds. When the Food Products Adulteration Committee sat, evidence was given as to an experiment of some interest. Two casks of the same butter, identical in every respect except that one was made with dry salt and the other with brine, were kept for five months. At the time of making there was 18 per cent. of moisture in the brine butter and 11 per cent. in the other. At the end of five months the butter made with dry salt was rancid and bad, but the brine butter was still sweet and good.

Evidence was given before the same Committee of three series of tests made with Irish salt butter. A large number of samples were analysed in each series. Half of the samples contained in two of the series had over 17 per cent. of water in them, and in 14 per cent. of the third series 22 to 30 per cent. of water was found. But generally speaking, an analyst who finds more than 17 per cent. of water in butter certifies it to be adulterated, and the seller is prosecuted accordingly. It was in consequence of the difficulty in obtaining convictions that magistrates and public authorities asked the Government to fix a butter standard. And by the Food and Drugs Acts, 1899, the Board of Agriculture has power to fix such a standard. So look out for it.

At present, there are many fraudulent persons who mix water and milk with butter to add to the weight, and not, as the Irish salt butter manufacturers do, for the purpose of introducing salt. A butter merchant of this kidney will take butter containing, say, 10 per cent. of water, and add from 4 to 5 per cent. more, thus changing butter of a fairly high quality into a butter of a low quality. I know that some butter merchants defend this course. They have got it into their heads that **about 16 to 18 per cent. of moisture in butter is allowable.** So it is, if it is there naturally. The Society of Public Analysts says 16 per cent. The Government analysts at Somerset House say 18. But it is certainly illegal to put it there after the butter is made; and I can find no other name for it than fraud, which is the name the magistrate will find for it if you give him a chance. It is like the case of pepper. Pepper very often gathers a little sand when being ground and when being packed, and this is excused if it is very slight and got there unavoidably. But because you got off once when there was $1\frac{1}{2}$ per cent. of sand in your pepper, that is not to say you may add $1\frac{1}{2}$ per cent. of sand to pure, clean pepper.

I have said that about 16 to 17 per cent. of moisture is allowable in butter. I ought, perhaps, to modify this remark and state that **rather more is allowable in Irish salt butter**, because when the butter is made with brine you are bound to add water, therefore the case comes under sub-sections (1) and (4) of section 6 (*see* p. 1147). You see, the brine is added first as a preservative—or, in the words of the Act, “because the same is *required* for the production or preparation of the butter as an article of commerce in a fit state for carriage or consumption.” That is sub-section (1). And the water is added with the salt because it is a better way of producing salt butter than by adding dry salt. Therefore the butter “is *unavoidably* mixed with some extraneous matter in the process of preparation.” That is sub-section (4). But you must be careful to note two words in these quotations. I have italicised them so that they will catch your eye. The one is “*required*”; the other is “*unavoidably*.” They both have the same bearing. You may sell Irish salt butter that contains brine required for the preparation thereof as salt butter—that is, as much as is required to keep the butter sweet for a reasonable time. You may also sell Irish salt butter containing as much water as is required to dissolve the salt, because that is “*unavoidably*” mixed with the butter.

But do not construe this into a licence to sell Irish salt butter containing any amount of water or salt. In 1894 the Manchester Corporation instituted a kind of Cromwellian persecution of Irish salt butter. They prosecuted all the sellers they could catch who sold butter containing over 21 per cent. of water. The butter trade took alarm, and a great fight took place in the Manchester Police Court, lasting seven days. The learned stipendiary, after hearing most of the leading analysts of the country, said he would **convict on 21 per cent. of water**. It followed, therefore, that he was ready to convict on more than 21 per cent. Some of the defendants escaped because they had a written warranty (*see* p. 1189), but the rest were duly convicted. “A word to the wise is enough.”

If I were a provision seller, I would not only protect myself by having a written warranty of purity with my Irish salt butter, but I would label every tub of it conspicuously with the label, “Irish Salt Butter.” Then when the inspector comes, and says he is going to have the stuff analysed, call his attention to the label. Also, when buying this kind of butter, try to make the wholesale merchant give you a guarantee of the amount of water being not more than 17 per cent. The reason is that some analysts, if they find more than 17 per cent., take it for granted there has been adulteration, and certify accordingly, whereby you are put to the trouble and annoyance of a summons. You may take it that most public analysts will cause you to be prosecuted if you have less than 80 per cent. of fat in your butter. The other solids may reach from 4 to 10 per cent., so that if your butter is watery (say 76 per cent. of fat, 2·7 of salt, 3·5 of casein and 17·8 of water) you will probably be prosecuted, not for selling butter containing too much water, but for selling butter containing too little fat—an alteration in form which will make, probably, a considerable difference in the result to yourself.

Cheese is adulterated in a very ingenious way. Lard and skimmed milk

are put together in a disintegrator. Both have previously been heated to 140° Fahrenheit by being placed in separate tanks which are heated by steam playing on them. The disintegrator is a curious machine. There is an outer cylinder and an inner cylinder. The inner cylinder is covered with projecting metal teeth with sharp points. The outer cylinder fits over the inner cylinder—not quite tight, but just so as to leave room for the inner one to revolve. Into the narrow space between the two cylinders the hot lard and milk are pumped; the inner cylinder is set revolving: as it whirls round with incredible rapidity the

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NOTE.

SINCE this chapter was printed the Departmental Committee on Butter has reported. It recommends that 16 per cent. of water be allowed as the standard, unless the trader gives notice to the customer of any excess. This is not law, yet; but probably 16 per cent. will now be adopted by magistrates as the standard. Keep an eye on the Press for the Board of Agriculture's final decision.

AUTHOR.

"FAMILY LAWYER," Vol. III. (To face p. 1178.)

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charged with selling an article of food, to wit, cheese, containing 14 per cent. of foreign fat, be sure you have a warranty in writing from the wholesale man of whom you buy; for the process described in the last paragraph has the effect of adding 70 lb. of lard to 500 lb. to 600 lb. (say 550 lb.) of "cheese"—roughly, 13 to 14 per cent.

It is no offence to have **cheese artificially coloured**, so long as the colouring matter employed is not injurious to health. It is a pretty safe rule to follow to say that vegetable colouring matters are innocuous, but to beware of mineral colouring matters. Cases of arsenical **poisoning** have been known in consequence of arsenic being put in cheese as a preservative. Also arsenic has been known to be used as a wash for the rind, to prevent attacks of the fly. Lead pastes have been used in the same way for the same purpose. Many public authorities treat these rind-washes as infringements of the Act, and prosecute for them; because, they say, poor people often eat the rind of the cheese they buy. I think this is a correct view of the law:

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Neither need I add, I daresay, that America is the home of the ingenious process roughly described above. I should not mention it but for a little warning I wish to give to my readers who **sell cheese by retail**. It is this: When you are buying American cheese, have a written warranty with it on all occasions. Don't trust to your own judgment; because our ingenious friend in Chicago, who wants to get rid of his hog fat, is so ingenious, so skilful, that he would deceive the very elect. There is American cheese—genuine cheese made solely from milk fat; but not much of it, I fancy, ever gets to Great Britain or Ireland. Wherefore, unless you have a particular desire to see yourself figuring in the local police-court, charged with selling an article of food, to wit, cheese, containing 14 per cent. of foreign fat, be sure you have a warranty in writing from the wholesale man of whom you buy; for the process described in the last paragraph has the effect of adding 70 lb. of lard to 500 lb. to 600 lb. (say 550 lb.) of “cheese”—roughly, 13 to 14 per cent.

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that if you put lead paste on cheese-rind you may be prosecuted for adding something to food injurious to health.

Canned foods are peculiarly liable to certain injurious ingredients, as to be themselves bad for the eater. The least flaw in the operation of sterilisation before the cans are finally sealed up will turn the contents of the tin bad very soon. Fermentation is due to certain bacteria present in the meat, or whatever else is canned. If the canning is done quite properly, the bacteria are all killed; and if the tin be thoroughly soldered and sealed up, no fresh bacteria can enter and sow corruption. Hence it follows that if the bacteria are not polished off to the last one before the tin is sealed up, you are bound to have rottenness very soon; and a gas is given off, and it tries to get out of the tin, and cannot; wherefore it bulges the tin outward. Moral, do not sell tinned meat, fruit, or whatnot if the tin bulges outwardly. If you do, your customer may die of ptomaine poisoning.

Another thing is that tin is easily dissolved in acids. Now all fruits, I believe, contain acids. Wherefore if you sell a tin of pears or a tin of tomatoes to a food inspector, do not be surprised if you are summoned for selling food containing a mixture—to wit, tin. Meat, soup, and fish are not liable in any great degree to this absorption of tin; but fruit and vegetables are, because of the nature of them. There is a great dispute amongst scientific men as to the effects of tin on the body. It is quite certain that if the tin gets into the blood it acts as an irritant poison; but a writer in the *Pharmaceutical Journal* says that tin, though possessing certain poisonous properties when introduced into the blood, “is entirely devoid of danger when taken internally in any form that could arise from being in contact with fruit or vegetables”—that is, it is not dangerous in the stomach or bowels. On the other hand, a case has been recorded in the *British Medical Journal* where the tin absorbed by some canned cherries set up a poisoning that attacked the heart; and I myself know of a case where a healthy man suffered greatly through the effects of canned vegetables. But in the latter case there was reason to believe that the vegetables had been flavoured with sulphate of copper, to keep them green.

Pickles, if they are very green indeed, may have been coppered to make them that colour. The dodge is to boil them, or else boil the vinegar they are to be pickled in, in a copper boiler two or three times. The contents of the boiler then acquire a certain amount of copper; and for every boiling the pickles can be warranted to go more green. Since I acquired the knowledge of this, I have not been at all anxious to eat green pickles. Not that all pickle makers do it; but some of them do. Heaven send them a long rope and a short shrift, say I; for I have no fancy for highly coloured delicacies that poison me.

Mustard is an article of food—or, rather, a condiment—over which a great controversy rages. I daresay many of my readers—all those who are grocers, at all events—know that the prepared “mustards” usually sold in this country are not pure mustards, but mixtures. They are, in fact, not mustard, but mustard-condiment. The good qualities are composed of ground

mustard and wheat-flour coloured with turmeric. Now there is nothing hurtful about this admixture ; and, as a rule, the public prefer it to pure mustard. The only question is whether it ought to be sold as "**mustard.**" The manufacturers of these brands say, "Mustard pure and simple, if ground for table use, would be too bitter for use ; and it would also be liable to go lumpy and bad on the grocer's hands before he could sell it, by reason of the ferment set up by the fixed oil. Now the wheat-flour has a twofold effect. It mitigates the bitterness, and it prevents the fermentation." In other words, they say, the flour is a preservative, and has the further advantage of toning the article down to the taste of the public.

There are, on the other hand, many analysts who declare it to be a fallacy to suppose that commercial mustard cannot be prepared without adding flour. Mr. Hebner, a public analyst of repute, declared to the House of Commons Committee that "facts have utterly disproved the statement that commercial mustard could not be made without being mixed." But, *per contra*, many other analysts, of equal repute, hold that the mustard manufacturers are right in their contention. Some day, I suppose, the battle will be fought out with horse, foot, and artillery between a wealthy mustard firm and some City Corporation moved thereunto by a zealous analyst. There have been one or two skirmishes already.

The *Analyst* journal records the summoning of several grocers before the sheriff at Jedburgh. Said grocers had sold Colman's well-known condiment as "mustard," and were charged with selling quantities of mustard not of the nature, substance, and quality demanded. The defenders defended themselves stoutly. They did not fail to use the arguments set out above—that pure mustard is too bitter for table use ; that it will not keep ; and so on. They further said that nobody ever bought pure mustard to eat. If anyone wished for the pure article, wherewith to make a plaster or the like, he asked for "pure mustard." If they gave their customers pure mustard when they came for "mustard," the next thing would be an angry man in the shop wanting to kill somebody. Wherefore, Jedburgh justice being now less pungent than formerly, the sheriff dismissed and exonerated the grocers. It was quite evident, he said, that people who wanted pure mustard, in that district, always asked for it. When they asked for mustard, they meant table mustard such as was commonly supplied.

In England also there was a case, and this went up to the High Court, Queen's Bench Division. Unfortunately there was a little flaw which prevented the case from being authoritatively settled there—some little mistake in the Court below. But in that case a grocer had sold mustard containing 35 per cent. of flour ; and the justices found that 35 per cent. of flour was "required for the purpose, for the preparation of the mustard as an article of commerce in a fit state for consumption." Thus it was brought within exception (1) of section 6 of the Food and Drugs Act, 1875. As I say, that is just the point. But the justices having made a mistake, the case never got properly decided ; so I cannot say whether the High Court

would or would not hold that mustard mixed with flour can be sold as "mustard" simply. One way out of the difficulty—a way adopted by some manufacturers—is to label their tins "mustard condiment." This is the **safe way**. If you put on a plain label you can have no fear of prosecution; but this, of course, only applies to mustard sold in tins as received from the manufacturers. There is also a good deal of the article sold loose. And if I were a grocer selling it, and someone came in and asked for mustard, I should ask, "Do you want pure mustard or table mustard?" If the customer says "Pure mustard," you know where you are. If she says, as she probably will, "Table mustard," you can safely sell the condiment mustard—*i.e.* mixed with a reasonable quantity of flour. Even then you must be careful not to have too great an admixture of the flour, or else you may be caught for fraudulently increasing the weight or bulk. You are allowed as much as will take away the natural bitterness of ~~the~~ mustard, which is also enough to act as a preservative.

My own opinion is that the grocer who sells mixed mustard—that is, mustard condiment—as "mustard" is very likely to "catch it" if the food inspector catches him. For although some mustard makers are bold enough to say you cannot get the bitter taste out of mustard, nor keep it for any length of time, without using flour, yet the old-established firm of Keen declare to the contrary. They sell their mustard as "genuine mustard"—at least, that is on a tin of theirs which stands before me as I write. I have asked my housekeeper, and she declares that Keen's keeps as well as any other. She says some prefer one and some the other—it is a matter of taste. I suppose she is right. It is a matter of taste. People who like their mustard diluted with flour are entitled to have it, and grocers are entitled to sell it; but in my opinion (for what it is worth), in the present state of chemical knowledge, those who sell the diluted article should call it "mixed mustard" or "mustard condiment." Another tin stands before me, bearing the label "Mustard condiment." This seems to me the safest.

Pepper is very commonly adulterated by the grower or the wholesale man, and I advise no retailer to buy it without a written warranty. The difference between black and white pepper is much the same as between wholemeal flour and white flour. The husk is taken off the berry in the case of white pepper, and not in the case of black. The peppercorns are ground either between stones, as corn is ground in the old-fashioned corn mill, or else in an apparatus like a coffee mill. The principal adulterations in Britain are the addition of P.D., H.P.D., and W.P.D.—the trade abbreviations for pepper dust, hot pepper dust, and white pepper dust. None of these is pepper at all. P.D. is usually linseed meal ground up fine. H.P.D. is the husks of mustard; and W.P.D. is ground rice. Foreign peppers are adulterated with all sorts of things—olive-stones, sand, sago, potato, chicory, bone-dust! And even the people who buy peppercorns and grind them in one of the little table mills sold for the purpose may be cheated. Rogues can and do imitate the peppercorn very cleverly by means of oilcake, clay, and bran rolled

into tiny pellets. Sand seems to be the most common adulterant except the P.D., H.P.D., and W.P.D. I need hardly say that the grocer who sells pepper mixed with P.D., H.P.D., or W.P.D. is liable to be convicted for adulteration, unless he bought with a written warranty and sold the article as he received it.

Lard used commonly to be mixed with beef fat ; but this is illegal. For lard is, according to the analysts' definition, made entirely from pig fat. The imported American lard is generally much inferior to English and Irish lard, because the maize on which the American hog is generally fed and fattened does not digest into very good lard fat. Moreover, the Chicago pig-killers, when they started their enormous lard industry, did not confine their "rendering" to the solid fat from round the kidneys and the peritoneum, or "leaf," of the pig ; but, with characteristic ingenuity and inventiveness, produced an apparatus that would extract the whole of the fat of a pig by steam and turn it into lard. The leaf-lard—the best of the lard, that is—they devoted to the manufacture of imitation butter ! A notable idea—to turn lard into butter, and common fat into lard. But our brethren across the water found two ugly facts staring them in the face. They found that their new "lard" was soft ; they also found that it had a flavour that did not commend itself to John, Alexander, and Patrick.

Once more the aforesaid ingenuity came into play. After much cogitation and many experiments, Jonathan of Chicago found out that if he mixed beef stearine with his inferior lard it would mitigate the objectionable flavour, and at the same time stiffen-up the article a good deal. In went the beef stearine, and to Britain and Ireland came the new product. But do you think Brother Jonathan of Chicago announced its composition ? As he would say, I guess not. The poor lard *plus* stearine of beef was still lard. Doubtless the manufacturer was actuated by the best motives. He knew what a conservative people the British people were. He knew that if he called his new product by a new name the British public would think it an inferior article, only worth an inferior price. So he stuck to the old name. He sold it as lard. Many British provision retailers also sold it as lard.

Then the sanitary authorities took a hand. Samples were purchased and analysed. Analysts easily found out that they were dealing with pig fat and bullock fat, mixed. So they certified "Adulterated." Summonses smote the luckless retailers. The public analysts, with their usual infallibility, declared that lard was **the fat of the pig, and nothing but the fat of the pig.** They admitted that the beef stearine did nobody any harm, except that it induced people to think they were getting a better article than they really were. But the point was, the mixture was not lard. Magistrates convicted, and the trade accepted their defeat. The price of lard went up ; for they had to make their inferior lard with a mixture of lard stearine instead of beef stearine ; and lard stearine is the dearer of the two. There are not wanting those who think that enough beef stearine to stiffen the lard (say 5 per cent.) is allowable as being "added to the food because the same is required for the production or preparation thereof as an article of commerce in a state fit for

consumption." I confess I am not of that opinion. It has been shown that lard can be stiffened by lard stearine, also by squeezing out some of the fat. These make the lard dearer; but how can that affect the law? The Adulteration Acts were passed not to give the public cheap food, or even wholesome food, but genuine food—and you cannot admit an adulteration which detracts from genuineness, unless that adulteration is absolutely necessary for the *production* of the food, not for its *cheap production*. That is beside the mark.

Spirits are not usually sold pure. In fact, it is quite allowable to dilute certain kinds of spirits if the material used in the dilution is only water. For by section 6 of the 1879 Food and Drugs Act a seller of spirits charged with selling spirits "not of the nature, etc., demanded to the prejudice of the purchaser"—the usual adulteration, that is—is entitled to be acquitted if he proves that the only adulteration is the addition of water, and that the spirits have been reduced in strength as follows:

Brandy, whiskey, or rum, not more than 25 degrees below proof;
Gin not more than 35 degrees below proof.

This section was passed to set up a commercial standard for spirits, because analysts differed to a very great extent. Note, if you please, that even if spirits are sold diluted beyond these limits the seller has a good defence if he gives proper notice of the dilution to the customer (*see* Section III.).

MINOR OFFENCES.

Besides the offences previously dealt with, there are a few minor offences, offences created in order to facilitate the working of the Acts. The first is that of **refusing to sell a sample**. Although I have called this a minor offence (and it is minor in the sense that the penalty is less than for others), it is grave enough. The section only applies where the person demanding the article is one of those public officials described in Section IV., and who are authorised by public authorities to take samples for analysis. If such an official applies to purchase any article of food or drug **exposed to sale, or on sale by retail**, he is entitled to be served. I deal elsewhere with what "exposed for sale" means. It is sufficient to say here that "exposed" means capable of being seen by the customer. If the customer can see the outside of the barrel or packet, that is enough.

And what is "on sale by retail"? Well, it means that you have not got the article out on show, but you have it on the premises, and are ready to sell it if it is asked for. But, you say, how is any officer to know whether I have it on sale or not, if it is not shown? Well, you know these people do not work in the dark. They generally have their suspicions before they act. Suppose, for example, you are known to be selling lard of an adulterated kind—watery—and an inspector hears of it, he will not come himself; he will send a woman, who will ask, "Have you any lard?" You have only one lot showing, and that is best home-tried, and genuine. She does not

want that. You point to the home-tried. "How much?" "Tenpence." "Oh! haven't you something a little cheaper? That seems very dear." "Well, m'm, I have some at eightpence, and some at sixpence," you answer, quite innocently. She says, "I'll take a pound of the sixpenny." You go to your back room and cut it off. You sell it, and get the money. Then the inspector comes in. Don't you see—the person who comes for the sample, if he or she does not see what is wanted, asks, "Have you so-and-so?" And if you say you have so-and-so, then you must sell a sample whether you like it or not, or be fined £10 for your refusal.

"Exposed to sale" means exposed either by wholesaler or retailer. "On sale" is only by retail, as you see.

If an inspector, etc., comes and demands a sample for analysis, you are, except under the Margarine Acts, entitled to be paid. You can only **demand a reasonable price**; and if you ask an unreasonable price, the inspector, etc., can offer you what is reasonable. If you decline to take it, you have refused to sell. On the other hand, if he offers too little, you have not refused to sell.

At one time, until 1900, in fact, there was a good deal of friction because inspectors used to make shopkeepers break bulk in order to get samples. If you sold potted lobster in 1 lb. tins, the fellow could make you open the tin and sell him half a pound. Now he cannot do that sort of thing. The Act of 1899 has stopped him. Where an article of food or a drug is exposed for sale in an unopened tin or packet, *duly labelled*, you need not sell it except in the tin or packet. You must be careful about this. Of course, it does not mean that if you sell your pepper from a big tin, and the inspector comes and demands some out of "that tin," you can refuse him. There has been no decision on the point; but I think "unopened tin" does not mean a tin which happens to have the lid on. It must mean, in my opinion, a tin that has not been opened. This is a great protection to the retailer, and will save him not only from some loss but from many traps. For, sad to relate, some inspectors used to try to trick shopkeepers by making them sell mixtures, well known to be mixtures, not in the labelled tins and packets, but separately. And if a shopkeeper had not the wit to label it himself, but gave the article wrapped in plain paper, he might be fined. One is glad this is stopped.

And be careful to note that the tin or packet is a labelled one. "*Duly labelled*" means, I suppose, labelled with a description of the contents of the tin or packet. If not, I do not know what it means. The Act says nothing. And the label cannot very well be the "mixture" label referred to in Section III. of this chapter; for that label is merely one notifying that the article is a mixture and not a pure article. Now this label need not necessarily be that. For a shopkeeper may just as easily sell pure articles as mixtures in tins or packets. Take, for example, Keen's mustard. I am told that this is a pure, unmixed mustard. Now it is clear that the shopkeeper can refuse to break a tin, if he likes. Yet the tin cannot be labelled as a mixture, because it is not a mixture. So I think "duly labelled"

must mean, labelled with a label shortly describing the contents of the tin or packet. Of course, if a tin or packet has no label on it at all, the inspector may require to be served with some part of its contents.

To constitute the offence of refusing to sell, the goods must be exposed for sale or on sale on some "premises," or "in any shop or stores," or in "any street or open place of public resort." I suppose the intention is to exclude private sales—though I hardly see how a private sale could take place unless it took place on some "premises" or "street or open place of public resort." The only thing I can think of is such a thing as a charitable bazaar held in private grounds and not in a building. If it is in a building, and articles of food are exposed for sale by retail, the Act seems to apply, because it is "on premises." I suppose "premises" means "building," though I should not like to back my opinion to any extent. It is only polite to assume that the words mean something; but one can, after all, only conjecture what they do mean. This point will not, however, affect traders as a rule; for they generally sell either in a building which is "premises" or "shop or stores," or else, as in the case of milk-dealers, hawkers, and so on, in the public streets. A market-place is, of course, "a place of public resort."

Another minor offence—though it is more severely punishable—is that of **obstructing or impeding an officer** in the course of his duties under the Sale of Food and Drugs Acts. A mere refusal to assist is not obstructing or impeding. Obstructing or impeding is a physical act, I should say. For example: An inspector goes into Jones's shop and buys a pound of butter from a shopman. He has got the butter, and paid for it, and is just telling the shopman that he intends to have the same analysed by the public analyst, when Jones appears on the scene. Jones is angry. And none the less angry because he knows that butter to be margarine. The inspector solemnly cuts the pound into three parts and wraps each one up. He lays them on the counter for a minute, takes out a fountain pen and some paper, and begins to write out the labels required for the three packages. As I said before, Jones is angry. In his anger, he picks up the three packages and throws them into a heap of refuse behind the counter, completing their destruction by stamping on them. There was a time when Jones could do this with comparative impunity. The old Act did not foresee or provide for such a contingency. Now, thanks to the 1899 Act, Jones would get a little summons for "obstructing or impeding an officer," and would be fined heavily.

Another kind of obstruction or impediment would be where an inspector, or his assistant, was taking a sample of food or a drug in course of delivery to the purchaser. Thus, by the new Act, an inspector, etc., may do in all cases what he has long had power to do in respect of milk. He can (the purchaser or consignee consenting) take a sample of any food or drug at the place of delivery while in course of delivery (*see* Section IV.). Suppose the carman delivering the goods, when the inspector wanted to turn over the packages to see which of them was lard and which not, got in the way,

and refused to allow the officer to touch the goods or look at them. I think that would be obstructing and impeding. Or suppose the inspector, with the purchaser's permission, was just cutting off a piece of the (say) cheese delivered by the grocer's man, and the grocer's man snatches it and drives off with it—that, I think, would be clear obstructing and impeding. In this case, of course, where the act complained of is done by a servant, the employer is not liable for it.

It is likewise an offence, heavily punishable, to induce or even to attempt to **induce an officer or inspector not to do his duty** by any gratuity, bribe, promise, or inducement. The only thing I am not sure about here is whether "other inducement" means inducement of a substantial kind. For example: suppose Hinkey, the County Food and Drugs Inspector, takes a sample of your "superior lard," which you know is adulterated enormously; and you say to Hinkey, "Thomas, my friend, I beseech you not to prosecute me. My father befriended you when you were a boy. If you analyse that lard I know I'm done for. Would you ruin me?"—and by such persuasion you induce Thomas Hinkey to suppress the lard, I am not at all sure whether you are or are not guilty of inducing him not to prosecute within the meaning of the Act.

But if I am not sure about that, I am at least sure that the section is aimed at a great and present evil. Many of my readers will, I expect, be able to support me when I say that not a few offenders against the Food and Drugs Acts have gone scot-free, though their offences were notorious, for no other reason than that they have been able to induce the public officers to betray their trust. Sometimes there is actual bribe, in money or in kind. Sometimes the guilty one is able to say, "Look here, constable, my brother is on the Council, you know: well, how would you like to be made a sergeant?" That sort of thing is only too common; and as the men who are able to do it are generally men in a pretty big way of business, they are able to sell with impunity thousands of pounds' worth of doctored stuff; while the wretched little grocer up a side street, who has no brother on the Council, and who is not able to pay backsheesh, is scolded and fined, and perhaps ruined, though he has only sold a hundredth part of the adulterated rubbish that his big rival gets rid of.

I daresay the new provisions set out hereafter, by which the Board of Agriculture and the Local Government Board may take a hand, will have a great effect on this sort of thing; and woe betide the offender who offers to bribe a representative of the departments.

FUTURE OFFENCES.

In the Food and Drugs Act of 1899, power has been given to His Majesty in Council—that is, to the Privy Council—to place restrictions on the importation of any **adulterated or impoverished article of food**. The Government has power, by an Order in Council, to declare that any particular article of food shall be placed in this category, so as to apply to it the same

regulations as are applied already to margarine and margarine-cheese, adulterated or impoverished butter, milk, and cream, and condensed, separated, or machine-skimmed milk (*see* Chap. II.). The effect of such an Order will be that unless such adulterated or impoverished articles are imported in packages or receptacles conspicuously marked with the name or description indicating the adulteration or impoverishment, an offence will be committed.

To take an example. There might be published to-morrow an Order in Council applying the provisions of section 1 of the Sale of Food and Drugs Act, 1899, to flour. The Order would be published in the *Gazettes* of London, Edinburgh, and Dublin, to come into effect, say, on the 1st of January next. After that date any person who imported adulterated or impoverished flour would be liable to a penalty under the Act, unless the flour were in bags, etc., conspicuously marked with some words like these: "Impoverished Flour." Any words to the like effect will serve.

"**Adulterated or impoverished**" has a wide meaning. It means (*a*) mixed with any other substance; (*b*) that any part has been abstracted so as to injuriously affect its quality, substance, or nature. But an addition of colouring matter or a preservative is not adulteration, so long as the substance used is not of such a nature nor used in such quantities as to be injurious to health.

If an article of food is proclaimed by Order in Council, samples can be taken and analysed, and the whole procedure is the same as in the case of imported margarine (*see* Chap. II.). Importers should, therefore, keep a look-out for these proclamations.

The certificate of the public analyst should always contain sufficient information to enable the magistrates to exercise their judgment upon it. It is by no means enough for the analyst to say "There is something in the article which ought not to be there," or to express an opinion merely. For instance, in the arsenical beer prosecutions that took place in 1901, one analyst said, "We are of opinion that the sample contains arsenic." Another said, "We are of opinion that the sample contains a serious quantity of arsenic." In both cases the High Court said there could be no conviction. You see, neither of these analysts stated *how much* arsenic was in the beer, or that arsenic was an improper constituent of beer. Both these facts should have been stated, because though the magistrates are bound to take the analyst's certificate as evidence of the facts therein stated, unless contradicted, they are not bound to act upon his evidence. They ought to be put in a position to exercise their own judgment.

SECTION III.

DEFENCES.

DEFENCE OF WRITTEN WARRANTY—Best defence—Innocent retailer—The one way provided by the statute—The rule a hard-and-fast one—Black and white—Section 25—Three things to be proved—Bought with written warranty—What is a written warranty?—Warranty—What is enough?—The cases decided—Not very uniform—Express individual representation—Forming part of the contract—Mere words do not matter—Invoice not a warranty—By Sale of Goods Act implied warranty—No help—The reason—Something on the invoice may be a warranty—Delicious butter!—Invoice a good defence in margarine prosecution—Label on the goods not a warranty—Mark on the goods not a warranty—The law epitomised—Case of Willson's lard—You can have a running warranty—Usually in milk cases—To what offences this defence does not apply—Abstraction—Servant may rely on master's warranty—Difference where warranty given by a foreigner—Reasonable steps to be taken by retailer—**DEFENCE OF LABELS AND NOTICES**—Virtue of a notice in the shop—Safety in a label—Label to be plain and legible—Label no protection where actual fraud—Seller liable, no matter who makes adulteration—Retailer ought to know what he sells—Protection without a label—Diluted spirits—Spirits sold as "mixed"—Why label safer than notice—**DEFENCES AS TO FORM**—Inspector not tendering money—Importance of noticing what inspector says—Time for commencing proceedings—**INSUFFICIENT DEFENCES**—Sold as received from manufacturer—Personal Innocence—"My servant did it."

THE DEFENCE OF A WRITTEN WARRANTY.

PERHAPS the best defence to a prosecution under the Food and Drugs Acts is that of "written warranty."

When the Act of 1875 was passed, it was felt that some provision ought to be made *to protect an innocent retailer* who had himself been deceived. For how is a grocer who sells tea in packets to know whether spent tea-leaves have been added before the packets were made up by the wholesale tea company? When he buys lard, how is he to know that it has 15 per cent. of added water or 5 per cent. of added beef fat? If he sends an order to an importer for ground coffee, how can he tell if the importer sends him coffee mixed with chicory? The skill of an analytical chemist is required to find out these things; and it is idle to expect the grocer to be a chemist himself, or to employ a man of science to test every consignment of every kind of food liable to adulteration. You desire, therefore, to find some way by which a retailer who tries to supply genuine goods, and believes he is supplying genuine goods, who keeps his heart from cupidity and his hands from adulteration—some way, I say, by which that man can protect himself so as not to suffer for the rascality of others.

At the same time, you must not make the test too easy. You must not allow the man who sells adulterated food to get off on every sort of pretext. You must make a standard of blamelessness, and if the retailer can come up to that standard—well and good; if not—so much the worse for him. When you have drawn your line, you must make it a hard-and-fast one. Allow no deviation to the right hand or to the left. Like the Prince in *The Pilgrim's Progress*, you must admit to the rewards of the just

only those who enter the way by the lawful and prescribed gate, showing no mercy to those who clamber over the wall. There is a goodly mixture of metaphors here; you may make your choice of them.

Therefore, when Parliament passed the Act of 1875, it provided **one way, and one way only, by which the innocent retailer of adulterated food and drugs might escape.** It is not good enough for him to say, "I did not know the goods were adulterated." If all men were always strictly truthful, this might have been enough. It is not even good enough for him to say, "I bought the goods as being pure and genuine. I paid a good price for them in order to get them pure and genuine; and I thought they were pure and genuine." That also might have been accepted, possibly, if everybody spoke the truth, the whole truth, and nothing but the truth under all circumstances. But all men do not speak the truth when the truth is hurtful to their pockets. Moreover, the persons aimed at by the Food and Drugs Acts are, by hypothesis, knaves—and a knave is most likely to lie, even under oath, to save his purse and his person.

The framers of the Act of 1875, therefore, saw fit to insist upon a hard-and-fast rule. They did not make honesty the test; for to get at honesty you have to get at the state of mind of the person whose conduct is in question. There are cases where this has to be done—in actions for "Deceit" and the like—but to get at a man's state of mind is a very hard thing. One old judge went so far as to say, some centuries ago, "the mind of man is not triable." This may not be quite true; but it is true that the mind of man is only triable with difficulty. You can get at acts—physical acts, I mean, acts that can be seen and heard and felt by others. Witnesses can speak to those acts as facts within their knowledge, because they have seen and heard and felt them. But when you come to motives and states of mind, then you can have only one witness—the man himself—the most biassed, the most prejudiced, the most interested witness of all.

With more wisdom, therefore, than they are accustomed to display, our senators declared that the honest retailer could protect himself only **by doing that which should be its own witness.** He should defend himself by black and white; so that the magistrates who sat to try him should not be bothered about honesty, which is a frame of mind; but only about a fact of which evidence could readily be given. And with that intent they passed into law the celebrated

Section 25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution.

Observe, if you please, what this is. A man who buys from a wholesale

trader and sells them by retail, may be prosecuted for selling adulterated goods. All that he has to do is to prove three things:

- (1) **That he bought with a written warranty** to the effect that the goods were what he himself was selling them as.
- (2) That he had no reason to believe that the article was anything other than what he sold it as.
- (3) That he sold it in the same state as when he bought it.

Observe, too, that it is not enough for the retailer to prove these three points in what I may call the legal sense. It will not necessarily be enough for him to call a witness, or more than one witness, to swear to the points. He must prove these things—all of them—to the satisfaction of the justices or Court. More than one man who has been quite ready with his written warranty has been fined all the same; because he has not been able to satisfy the justices that he had no reason to believe that the article was adulterated. Some adulterations are visible to the expert eye, though they would not strike the non-expert. Some adulterations can be told by the smell, some by the taste—provided you know what to look for, to smell for, and to taste for; and a retailer who had an opportunity of finding out such adulterations as these, and did not choose to do so, cannot grumble at being held responsible.

The first thing that concerns the retailer is the answer to the question, **What is a written warranty?** The term "warranty" is well known in the law relating to sale of goods. It means a term of the contract of sale, or else a subsidiary contract made at the same time as the contract of sale, whereby the seller pledges himself that the thing sold is of such-and-such a kind, or is not of such-and-such a kind, or is of such-and-such a quality or age, or that it is fit to perform certain uses, or that it is of a particular make. The best-known warranty is called a horse warranty. On the bargaining for the sale of a horse it is customary for the buyer to ask for a warranty—for instance, that the horse is sound in wind and limb, or is quiet to ride and drive, and so on. If the seller refuses to give the required pledge, the buyer either does not buy at all or else offers a lower price.

In the case of the sale of food and drugs by a wholesale to a retail dealer, **what ought the retail dealer to have** to shelter himself behind in the case of a prosecution? The cases that have been before the Courts on this matter have been many, and the decisions given have not been at all uniform. At first, when the Act became law there seemed a tendency in the judicial mind to haggle over mere words. In one case the late Lord Coleridge said that the warranty must be, in explicit terms, "I warrant the [*article*] to be genuine and unadulterated." He seemed to think that by "written warranty" the legislature intended to make the use of the word "warrant" compulsory; or, rather, that if the word "warrant" or "warranted" were not in the writing put forward as a warranty, then there could be no warranty to satisfy the Act.

But the silver-tongued Chief Justice seemed to have forgotten the general

principles of the law of England. By the law of England mere words matter very little in business documents. The question is not What are the words used? but What do the words mean? Thus, if you and I enter into an agreement to carry on business together, and expressly, in solemn language, agree that "this is not to constitute a partnership between the parties," yet if it is in fact a partnership, it is none the less one because we said it was not. And if I give you a paper by which I do in fact "warrant" (*guarantee* is the word used by the average man) my horse to be quiet to ride and drive, or my knife to be made by the well-known firm of Jones, or my milk to be unadulterated and to contain all its cream, the language I use makes no difference on earth. Mr. Justice Wright hit the nail on the head, I think, when he said that a warranty was "*some express individual representation from seller to buyer forming part of the contract.*" One learned judge has gone still further, and held that the representation need not be "individual." I take leave, however, to think him wrong, for once. Let me now try to show you, as well as I can, what sort of things have been held to be warranties by the Courts, as well as what have been held not to be warranties. To begin with, **an invoice is not a warranty.** To put it, perhaps, in a better way: If you have a mere invoice of the goods from your wholesale seller, it will not protect you. You know what an invoice is—it is a list of the goods bought, with the price per hundredweight or per pound and a statement of the total price. The usual invoice is something like this—

"51, Charlemagne Street, Grubton-on-Sea.

"*Mr. Slouch.*

"Bought of

"John Boujan & Co., Wholesale Provision Merchants,

"1½ cwt. best lard at 57s.

£4 5 6

"2 Dutch Cheeses 52 lb. and 71 lb. at 4½d.

2 6 1½

£6 11 7½."

And probably there is some statement at the foot as to terms—e.g. "Dis. 2½ per cent. in a month, afterwards net cash."

Now the point I wish to labour with you is this—a mere statement in an invoice as to quality is not a warranty sufficient to satisfy the Food and Drugs Acts. In the sample given above, you see "best lard"; but this is not a warranty that the lard is pure and unadulterated—not enough to satisfy the Act of Parliament, at all events. It is a mere description of the goods sent by Boujan & Co. to Slouch, and will be no protection to Slouch if he should be prosecuted because the lard is adulterated. A case in point: Mr. Hopley was a retail provision merchant in Manchester. He sold lard, amongst other things; and one day his shop was entered by Mr. Rood, inspector of nuisances of the City of Manchester, who said, "I want a pound of lard." The shopman addressed cut and weighed a pound from a substance appearing to be lard, and handed it over. Rood in turn handed it to the City

ORDER FORM WITH WARRANTY-SLIP ATTACHED.

For use by the Retailer in ordering goods.

ORDER FORM.

Aug 20th 1902

From

To

JOHN JAMESON,
Grocer and Provision Dealer,
117, HIGH STREET, TOLSTON.

Slapper Dache & Co
Wholesale Provision Merchants
915 Key Lane Road
Manchester

Please forward goods as under:—

One cwt Canadian Cheese @ 45/-
Two cwt Best Lard @ 46/-
Three cwt. Seconds Lard @ 38/-
To be sent Carriage free on usual terms as to
discount and credit

N.B.—To meet the requirements of the Food and Drugs Acts, this order is given subject to the warranty-slip below being signed by you and forwarded on despatch of goods, or with invoice if invoice is sent before goods.

WARRANTY-SLIP.

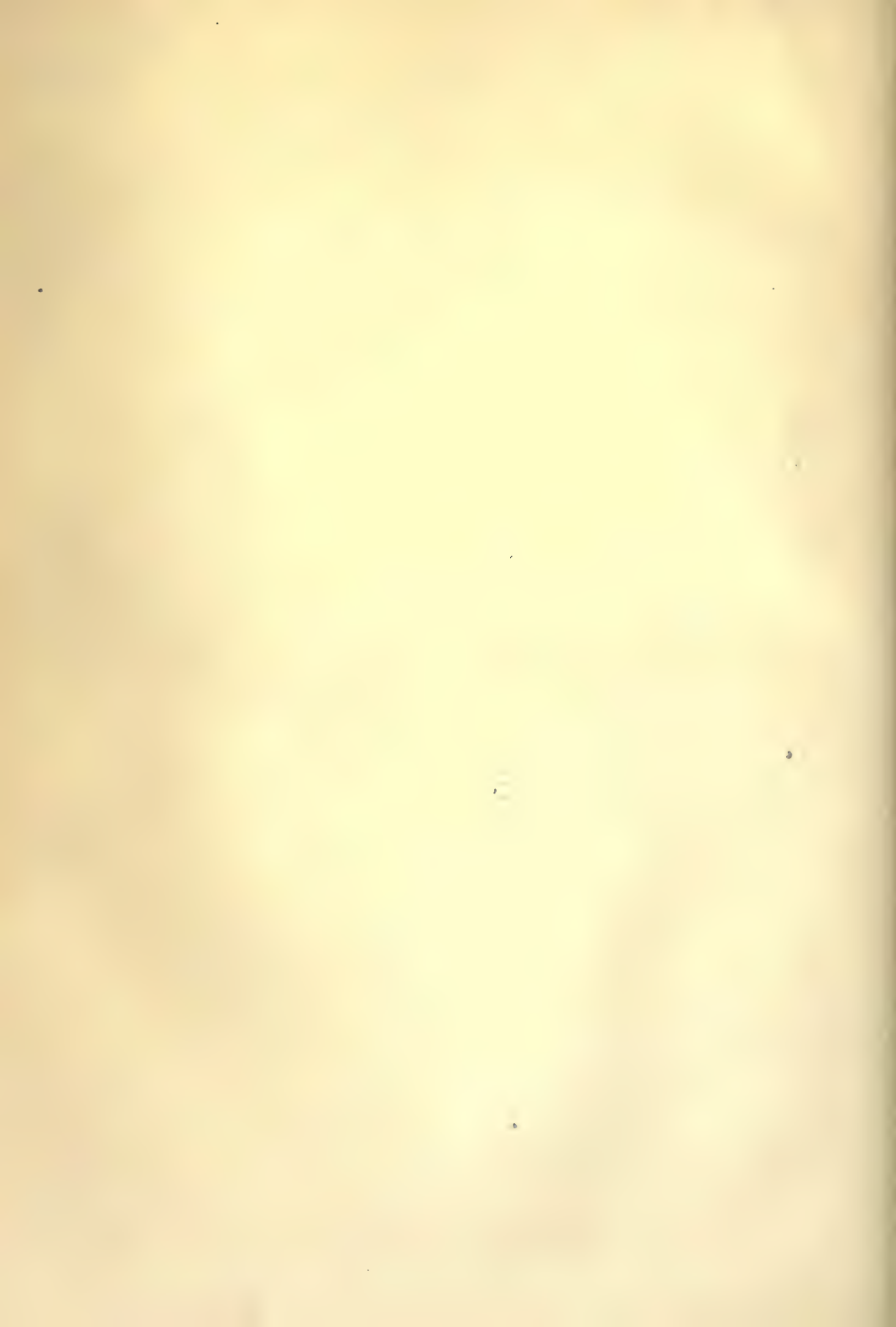
The undersigned acknowledge receipt of order as below from John Jameson,
117, High Street, Tolston:—

One cwt Canadian Cheese @ 45/-
Two cwt Best Lard @ 46/-
Three cwt. Seconds Lard @ 38/-
To be sent Carriage free on usual terms as to
discount and credit

And agree and warrant that the goods sent to answer the order shall be pure
and unadulterated.

(Signed).....

Date



analyst, who certified that it was adulterated with 15 per cent. of water. Now Hopley had bought the lard from William Walker, of Liverpool, a wholesale cheese factor and provision merchant; and the particular quantity in question had been purchased on the following invoice:—

"6, Button Street, Liverpool,
20th June, 1876.

"Bought by Mr. J. Hopley, Manchester,
of

"William Walker,

"Cheese Factor and Provision Merchant,

"4 Tins lard 'No. 1'

"28 lb. each, 1 cwt. K. at 55s.

£2 15 0."

Hopley was able to prove that when he bought the goods he asked for "lard," and that he sold the one pound to the inspector believing it to be pure lard and in the same state that he bought it in; and he argued that the invoice itself was a warranty—a warranty that the substance bought was "lard" and not lard and water.

The case came up to the Superior Courts in London on appeal, and there the prosecution contended that if this plea were allowed there never could be a conviction where the seller gave an invoice. "Warranty," said the counsel for the prosecution, "cannot be contained in a mere description of the article sold." This argument was adopted by the Court. This Act, the judges said, required a specific warranty—a specific statement that the lard was pure lard—a contract that the wholesale dealer warranted the article genuine. Moreover, they said, a mere description of the article as "lard" in the bought-note or invoice is not in law a warranty of the quality of the article. Therefore Mr. Hopley was convicted.

I want you to observe that this case was in 1876. Since then the Sale of Goods Act, 1893, has been passed; and that statute enacts that when goods are sold by description the seller warrants them to be of merchantable quality (see *Family Lawyer*, pp. 671-2).

I am not aware of any case since the Sale of Goods Act, 1893, where a retailer has set up the proposition that if he buys a thing described in the invoice as "lard," he gets thereby a written warranty that the lard is pure and unadulterated; for I think that adulterated lard could not be described as merchantable—that is, saleable. I do not see, that is, how any-one would readily buy as lard what was really adulterated lard. Try it yourself. Say to a customer who comes in and asks for lard, "This lard is adulterated [or diluted] with 15 per cent. too much water," or, "This lard is mixed with beef fat," and see how much of it he will buy. He might, perhaps, buy it for greasing cartwheels; but then he would want it at a price that would not pay you to sell at.

My own opinion, however, is that *in this connection the Sale of Goods Act, 1893, does not help the retailer a little bit.* In another connection it does, as

you will see if you look at p. 1219 ; but not, I think, as a defence to a prosecution for selling adulterated food or drugs. I should not have mentioned it in this connection at all but for the fact that I know there is a notion abroad that it does—a notion, perhaps, encouraged by a note in the third edition of one of the standard handbooks on the subject—the handbook by Sir W. J. Bell and Mr. Scrivener. It seems to me that there is one fatal objection. The Food and Drugs Act, 1875, says there must be a “*written warranty*.” Now the warranty of quality spoken of in the Sale of Goods Act is not written—it is *implied*, or statutory. I know it may be argued that if you have one word written, *e.g.* “Sold to you one hundredweight of lard,” the word “lard” is as if you had written, “Genuine lard, free from adulteration.” I confess this is too fine for me, and I fancy it would be too fine for the judges. Anyhow, I should not rely on it if I were you. I should prefer to get a plain, straightforward warranty in so many words. Nor is there any reason why wholesale provision merchants who pretend to supply unadulterated goods should not keep a printed form, such as this, “We warrant this [lard] to be genuine and unadulterated.—John Spotkin & Co.” Let this be sent with every consignment ; and the retailer is in a sound position, able to bear with equal mind the visits, hitherto dreaded, of the nuisance inspector.

Failing this, let all retailers who are in a position to do so, when ordering goods liable to adulteration, such as lard, ground ginger, pepper, and so on, say to the traveller or write to the firm, “**We expect a written guarantee of purity** with the goods, to satisfy the Food and Drugs Acts.” No honest merchant ought to object to give such a warranty.

To turn again to the invoice question. One Irons, of Handsworth, Staffordshire, was cruelly deceived. He bought four canisters of ground ginger, labelled on every canister, “Warranted genuine pure ground ginger.” The invoice merely said, “Bought four canisters (8 lb.) ground ginger.” Mr. Irons put up the canisters on the shelf in the shop, and when anyone came in to ask for ground ginger he reached down a canister and ladled the required quantity out of it. One day he had such a customer, who bought ground ginger of him, said customer being a messenger sent by Mr. Van Tromp (not the famous admiral ; he is dead), the sanitary inspector of that part of the world. On being analysed, the ginger so glowingly described on the canister turned out to be very poor stuff indeed. In fact, if all ginger were of the strength of this, ginger would not be so very “hot i’ th’ mouth.” For it was composed of 10 per cent. of genuine ginger and 90 per cent. of spent ginger—probably ginger that had expended itself in the making of ginger-beer, and had been dried after more than half the goodness had gone out of it. Mr. Irons produced his invoice. The magistrates declined to have anything to do with it. Then he produced his label. Once more they refused to hearken. The retailer then appealed to the High Court of Justice, where his case was heard by the late Mr. Justice Cave and Mr. Justice Wright. After hearing all about it, the genial Cave observed, “That won’t do, you know”—a sure sign that learned counsel were trying to ram a fallacy down the throat of his lordship. By the way, not a very easy matter, as I

have found more than once. This particular time, the grocer's lawyer was trying to persuade the judge that because in a milkman's case where there was a written and explicit contract of warranty extending over six months, and every can was labelled, and the judges there had looked both at contract and label and had read them together, therefore in this case you must read invoice and label together. But Cave, Justice, was too old for that. "Yes!" he said, "but in that case *there was a contract* of warranty in actual words; and the label was only read to prove that the milk in the can sampled was milk to which that contract referred. Here you are trying to build without a foundation. There is no word of warranty in the invoice, therefore what the label says does not matter."

What I am trying to impress upon my readers is that **a mere invoice is not a written warranty as to the goods described therein.** *But something may be written on the invoice, or added to it; and that something may make all the difference, as Mr. Williams, a grocer in a large way, once discovered to his advantage. Mr. Williams traded in a good many places as "The World's Tea Company," and he was the sort of man who need never hire a trumpeter until one is wanted to play at his funeral. He could say everything that was to be said, and more, in praise of his own wares. He had a shop at Gosport, where he sold, amongst other stuff, butter. It occurred to Inspector Hawkins to send someone for a sample. The messenger went, and returned in due course with a pound of butter wrapped up in a paper. On the paper were these words: "The World's Tea Company's Delicious Butter. Guaranteed absolutely pure, direct from the farmhouses. No middleman's profits to pay." Alas! on analysis the "delicious," "pure" "butter," unsullied by the hands of the middleman, turned out to be adulterated with 17 per cent. of foreign fat. And alas! again; for when the World's Tea Company turned up in Court he told a story far different from the story on the wrapper. The butter had, possibly, come "direct from the farmhouses," but those farmhouses were the farmhouses of Australia—not the farmhouses of Dorset and of Devon. In short, the butter was Australian frozen butter. And as for "no middleman's profits"—well, I do not know; possibly the middleman who sold to the World's Tea Company did not make a profit. He was, maybe, a philanthropist in butter. But, profit or no profit, the middleman, or importer, had done one thing Mr. Williams had cause to thank him for. He had sent an invoice, and on this invoice was written not only "— tons butter @ — shillings," but underneath were the words written "Guaranteed pure," initialled by the importer.*

These words, with the initials, saved the World's Tea Company from a fine. For on the case being brought up to London on appeal, Lord Russell of Killowen and Mr. Justice Wills held the words in question to be a written warranty within the Act—**under the circumstances.**

What were the circumstances? Well, the circumstances were these. The invoice was dated on the very day that Williams bought from his wholesale man, the importer. The words "Guaranteed pure" and the initials were sworn to have been put there the same day. Lord Russell of Killowen said

it was quite evident that Williams had spoken to the importer about a warranty, that the importer had agreed to give him one, and that he had done it by writing on the invoice. You observe that the two words "Guaranteed pure" were not really part of the invoice at all. It is not the function of an invoice to give warranties of quality, but merely to describe the quantity and kind (not quality) of the goods and their price. Because I write to the widow Blake, to whom I am selling a side of bacon, an invoice, "Side of bacon, 14 lb. @ 7d.," and underneath I add, "Will you change your name to Murphy?" the last words are not part of the invoice. A man is not a horse because he was born in a stable. Nor is a contract any the less a contract because it happens to be written on the same paper as something that is not a contract. In this case, therefore, the World's Tea Company, *alias* Williams, got off.

Now do not let yourself be misled by this case. If you go and buy a quarter of a hundredweight of pepper, and receive an invoice thus—

INVOICE No. 1.

MR. SCARGE.	Aug. 12th, 1901.
<i>Bought of</i>	
BOWNES, GROWNES & JOWNES	
28 lb. guaranteed genuine pepper . . .	£12 0 0

that is no warranty; at least, not in my opinion. But if you receive this—

INVOICE No. 2.

MR. SCARGE.	Aug. 12th, 1901.
<i>Bought of</i>	
BOWNES, GROWNES & JOWNES	
28 lb. pepper	£12 0 0
Guaranteed pure.	
B., G. & J.	

in my opinion you can use the document as a warranty. You see the difference. In Invoice No. 1 the "guaranteed genuine" is evidently only part

of Bownes, Grownes and Jownes's description of the pepper sold. They do not put in "guaranteed genuine" because you contracted with them that they should put it there. On the other hand, if, as in Invoice No 2, they first describe the thing sold, and afterwards add something as to its quality and initial it, the chances are that they did so because you had agreed with them that this should be done. It may, in fact, with some safety be said that if you have a case exactly like Williams's case the result will be the same; but the least variation will upset you.

In only one case is an invoice, pure and simple, a protection, and that is in the case of MARGARINE (*see* Chap. II.). And one argument against a mere invoice being regarded as a warranty in other cases is that an invoice is specially mentioned in the Margarine Act, 1887. In a prosecution for selling margarine as butter you can use as a defence an "invoice or warranty." Now if an invoice were a warranty, the word "invoice" is superfluous. And the argument is the stronger because by the Food and Drugs Act of 1899 the Margarine Act is, as it were, incorporated into the general adulteration law, and all the Food and Drugs Acts, together with the Margarine Act, may be cited collectively as "the Sale of Food and Drugs Acts 1875 to 1899." So that if an invoice were a warranty at all, you have the law using two different words, with different business meanings and different legal meanings, to mean the same thing; which is absurd.

In the account of the case of Mr. Irons, of Handsworth, I stated that there was a label on the canister. Now I wish to say that if you buy an article from the wholesale merchant, and it is labelled with a label "Guaranteed pure," that is not a written warranty within the meaning of the Food and Drugs Acts. I would state the proposition thus: **A label on the goods is of itself no protection.** This appeared in the case of Irons of Handsworth and his ground ginger. There was a case, mind, in which a very eminent pair of judges, Mr. Justice Mathew and Mr. Justice Kennedy, held that a label might be a written warranty. The case was a hard one—and it is an old saying that hard cases make bad law. The two learned judges I have named are both men who are humane to a fault; and in my opinion, and, I think, the opinion of the legal profession as a whole, they strained the law in this case to save a poor woman from a proper, if possibly harsh, application of the law.

The woman in question was a Mrs. Lindsay, who had a shop where she sold all sorts of things—vinegar was one of them. She ordered from the firm of Grimble, of Cumberland Market, London, a cask of malt vinegar; nothing was said, when the order was given, about a warranty. She duly received the cask, with invoice for the same. The invoice merely described the goods as "Grimble's vinegar"; but on the cask was a red label, "Vinegar warranted unadulterated. Grimble & Co., Ltd., Cumberland Market, London." A nuisance inspector sent for "a pint of malt vinegar," which Mrs. Lindsay drew from the cask and gave to him. The cask was in the shop, in full view of customers, with the label staring them in the face. Unfortunately the vinegar was not up to standard: it was watered 15 per cent. too much. And when

Mrs. Lindsay was prosecuted for selling it she said, "I bought with a written warranty." "Where is the warranty?" the magistrate inquired. Mrs. Lindsay produced the label. "Won't do," said the magistrate, and duly fined Mrs. Lindsay. The worthy woman (or possibly Grimble's, on her behalf) appealed; and then Justices Mathew and Kennedy delivered the judgments of which I complain. They were short and to the point. Mr. Justice Mathew's occupier about four lines of the law report. "We must," said he in his gruff way, "give a reasonable interpretation to section 25. The appellant [Mrs. Lindsay] bought with a warranty—with a label on the cask. This conviction must be quashed." And quashed it was. But do not you, my reader, go and do likewise, or you may be quashed and not the conviction. That is the worst of these sympathetic judges! They lead people astray.

No! A label on the barrel, or canister, or packet, is not enough, however emphatic the language of it may be. Still less is a **mere mark on the goods** such as was sought to be set up in one case I have read of. It was a case about the old subject, lard. Mr. Smithson, a retail provision dealer of Hetton-le-Hole, sold lard which he bought in skins; and each of these skins had printed on it, in clear type, "Warranted Pure Star Brand"—nothing else: no name of the firm, or person, or company who supplied the lard. Mr. Smithson once sold a pound of this bladder lard to a food inspector of the County of Durham; and when the sample had been analysed it turned out to contain 8 per cent. of beef fat—at that time a very common thing. When the usual adulteration summons followed, Mr. Smithson urged in his defence that he "bought with a written warranty" from Jeshua Wilson & Brothers. "Produce the warranty" was, of course, the very first thing the prosecutor said. Whereupon the defendant brought forth the bladder in which the lard had come. What is more, the magistrates acquitted him—on the ground that the words "Warranted Pure Star Brand" were a warranty of genuineness. But when the case went up to London, before two judges of the Queen's Bench Division, they took a different view. There was no need for them to go into the question very deeply. They made up their minds on the fact that the so-called warranty did not say what article was warranted. It did not say "Warranted Pure *Lard*, Star Brand"; it only said, "Pure Star Brand," and very likely it was pure Star Brand—the finest there was, anyhow.

It seems, then, that labels and invoices and marks on the goods are of no avail. And the reason is that the words on an invoice, or on a label, or stamped on the goods themselves, are not the contract between the wholesale man and the retail man. You must have something more than that. The question is, What? Now although the decisions of judges, or some of them, may appear to differ from one another, they differ only in the application of the law. They all agree that there must be a contract of which the warranty is part—and the contract must be for the sale of the goods in question, or else there must be one contract for the sale of the goods and another for the warranty.

There must be, in fact, **a contract, forming part of the contract**

between the wholesale merchant and the retail trader, containing a distinct representation of the genuineness of the goods. As I have said, the word "warrant" need not be in it. Anything will do if it is in fact such a representation. A very instructive case was heard in the Courts not very long ago, where this was thrashed out. A Mr. Willson, of Newcastle-upon-Tyne, had a branch shop at Consett, in the neighbouring county of Durham. He was a grocer in a large way of business, and used to buy large quantities of goods and distribute them to his various shops. He had dealings with Kilvert's, of Manchester, in lard; and in December, 1892, he ordered three tons of that commodity from them. He received from them the documents copied underneath, which I have numbered I. and II.

"Contract.

"Mark Lane, Withy Grove,

"Manchester, December 17, 1892.

"To Mr. Walter Willson,

"Newcastle-on-Tyne.

"We have this day sold to you 3 tons of *Kilvert's pure lard* on the basis of 56/3 per cwt. for Kilvert's delivery to the end of January, 1893.

"We are, your obedient servants,

"pp. N. Kilvert & Sons, Ltd.

"M. A. Holgate.

"Please sign and return attached receipt."

II.

"Invoice.

"Ten Barrels Kilvert's pure bladder lard.

"Consett.

205/

1.	1.	0
		2
2.	2.	0

56/3

£	s.	d.
7	0	8."

Now document I. was clearly not an invoice, but a contract of sale—a sort of time contract for the delivery of lard amounting to three tons in all at different times between the 17th of December, 1892, and the end of January, 1893.

The food inspector at Consett seized a sample—or, rather, bought one—of lard sold in Willson's shop, had it analysed, and was able to show that it contained 7 per cent. of beef fat. Quite harmless, but not lard. Willson was duly summoned, and at the Court he produced the contract—document I. And he said, "This is a contract containing a representation that the lard is pure lard. Therefore it is a warranty within the meaning of the Act."

"Not so," said the prosecution; "this contract nowhere says that the lard is warranted pure. It only describes the goods sold. 'Kilvert's pure lard' is like saying, 'Muggins's superior toffee.' It means lard which in Kilvert's opinion is pure, just as the other means toffee which in Muggins's opinion is superior."

The case was touch-and-go. The two judges of the High Court who finally decided it hesitated a little. Then they found for the tradesman. Their reasons were, that the word "pure" appeared to be an essential part of the contract between Kilverts and Willson. The same words in an invoice would mean nothing more than description. In a contract they amounted to a representation by the seller. You are not to expect in business documents the same fulness of expression that you find in a deed drawn by a lawyer. Business men try to be brief; and the mere insertion of the word "pure" was intended to be a representation as to quality by Kilvert's, and was accepted as such by Willson.

In 1883 a Mr. Harris was charged with selling adulterated milk. He was convicted by the justices, and appealed. It appears he had a running contract for a length of time with his wholesale man, under which the wholesale man was to supply him every day with "new and pure milk." In that case the judges of the High Court said that you could not have a running warranty. You must have a warranty applying to the specific article. This decision was, in my opinion, wrong; and it may now be disregarded; for since that case the High Court has come round to the view that **you can have a running warranty.** In other words, that you can have a contract for, say, six months' supply of milk, and a written warranty that all the milk supplied shall be of the purest, with all its cream, and unadulterated; and that warranty is good enough to protect you in respect of all the milk supplied to you under the contract during the six months.

Not only does this apply to milk, but to any and every other kind of food. You can have a contract with your wholesale cheese factor to supply you with so many hundredweight of cheese every Monday for twelve months; and a written warranty from him that all the cheese so supplied shall be genuine cheese and unadulterated. And so with regard to every other kind of produce. I am not aware, however, that grocers and retail provision merchants are in the habit of making running contracts of this kind. I do not think it will do for you to take a warranty, "I hereby agree that all the cheese I supply you with for twelve months shall be genuine and unadulterated," unless at the same time you have a contract for the supply of cheese for twelve months by the man who gives the warranty.

The great case in which the "running warranty" was established was that of the Farmers' and Cleveland Dairies Company, Limited, against Stevenson. Amongst other senders, the Dairy Company bought milk from the Higham Dairy Company, of Alfreton, Derbyshire, with whom they had a time contract. This contract, which was in writing, was as follows: the Higham Company was to supply 100 to 120 gallons of genuine good new milk of the best quality with all its cream on; and the writing continued, "The

vendor hereby warrants each and every supply of milk delivered, or in course of delivery, or to be delivered by him under this contract, to be pure, genuine, and new milk, unadulterated, and with all its cream on."

On March 12th, 1890, the Higham Dairy Company sent seven churns of milk to London by rail; and on each churn was this label, "7 cans, 101 imp. gals., March 12th, 1890, of warranted genuine new milk, and with all its cream on. From Higham Dairy Company to the Farmers' and Cleveland Dairies Company, Limited, St. Pancras." The churns reached London on March 13th, and the milk was sold by the Cleveland Company the same day. An inspector took a sample from one of the men, and when analysed it was found to have 20 per cent. of its fat abstracted. The Cleveland Company being prosecuted, they brought forward the written contract quoted above, and the label; and argued that this was sufficient written warranty to satisfy the Act. The magistrate held that the contract was of no avail, as it was a running contract, and that the label was nothing but a mere description of the milk.

The Dairy Company appealed to the High Court, and won their case. Justices Hawkins and Stephen considered the warranty sufficient; and Mr. Justice Stephen hit the nail on the head when he said, "In the agreement there was a written warranty that the milk delivered was to be pure, genuine and new milk, unadulterated, and with all its cream on, and *the fact that the milk was not to be delivered all at one time does not, to my mind, make any difference.*"

In a case decided in 1901 by Justices Bigham and Ridley—referred to in another place (Chap. II.)—Mr. Justice Bigham delivered a long and learned judgment in which he utterly dissented from the view of the law taken by Lord Coleridge. He showed how that view was inconsistent with the Act of Parliament and with the late decisions; and said that Lord Coleridge's view was not correct and never had been. Nice comfort, this, for the poor wretches who had been fined all over the country! Perhaps it will be a consolation for some of them to learn, after all these years, that they were right and the late Lord Chief Justice was wrong, and that they never ought to have paid that £20 and costs.

By the way, if you look at the warranty on p. 1199, relating to Kilvert's lard, you will see that it was a running warranty. All the lard was not to be delivered at one time, but by several instalments at various times from the middle of December to the end of January.

The defence of a written warranty **does not apply** to the offence of mixing, colouring, staining or powdering, or permitting another person to do these things to an article of food with intent that the same may be sold, if the ingredient or material mixed is injurious to health. Nor does it avail anyone who mixes, colours, stains, or powders a drug so as to reduce its potency, or orders or permits another to do so. Nor does it apply to the case of abstracting any part of an article of food so as to injuriously affect its quality, substance, or nature.

Until 1900 there was an exception that I always thought a very hard

case. It was this: If **a servant** sold on behalf of his employer goods that were adulterated, he could not rely on the written warranty defence. To show you how it worked: A servant of the Farmers' and Cleveland Dairies Company was summoned for selling adulterated milk. He was only a servant, selling what his masters gave him to sell, and without any knowledge of its adulterated state. He was convicted and fined. Now the irony of it all was that if the Farmers' and Cleveland Dairies Company had been summoned, as they might have been, they would have had a perfectly good defence. They had bought the milk from a farmer who warranted its purity and quality in writing. The unfortunate servant was not allowed the benefit of this, because the 1875 Act said that the man who could rely on the warranty was the man who bought with a written warranty. And the servant, though he was the seller of the milk within the meaning of the Act, was not the buyer thereof. The warranty had not been given to him, but to his masters. Therefore he had no warranty; he had not bought the milk at all, therefore clearly he had not bought with a written warranty.

One is glad to think that the law has been remedied. The 1899 Act provides that in future, when the servant is prosecuted for selling, he can rely on the fact that his master bought with a warranty. He must also prove—as the master would have to—that the article has been sold in the same state in which it was received from the wholesale dealer, and also that he (the servant) had no reason to believe that the article was adulterated; as the statute says, “had no reason to believe that the article was otherwise than that demanded by the prosecutor.”

The same thing applies where, in a margarine prosecution, the master could rely on an invoice. **The servant can now rely on it, too.**

I would call the attention of the reader to the fact that before he can avail himself of the written warranty as a defence, he must take certain steps described in the section on “Proceedings.”

There is one sub-section of the 1899 Act, relating to warranties, that will prove a thorn in the side of some people. A custom had sprung up—perhaps I ought not to dignify it with the name of custom; it was, rather, a nefarious practice obtaining amongst a few unscrupulous persons—to buy goods from abroad. These goods were doctored beyond belief, and were sold by the importer as genuine. He knew, pretty well, that they could not be genuine; but, as he took care to obtain a written warranty with every consignment, that did not trouble him much. Being prosecuted, or threatened with prosecution, he would triumphantly produce his most indubitable warranty, and the law could not touch him; for when he swore that he had no reason to believe the goods other than genuine, as warranted, the magistrates could (or would) rarely convict, for the simple reason that no one could contradict the defendant's oath, so he got off. And you could not get at the foreigner for giving a false warranty, because the offence was committed out of the jurisdiction of our Courts; the foreigner, moreover, could not be brought to England to answer.

By way of trying to spoil this little game, the 1899 Act declares that **when**

the warranty is given by a person abroad it shall not be a defence unless the defendant also proves "that he had taken reasonable steps to ascertain, and did, in fact, believe in the accuracy of the statements in the warranty." You see, the burden of proving that he took reasonable steps is on the defendant, the retailer. If he produces the foreigner's warranty, and that is all, he **must** be convicted. If he merely says, "I took all the steps I could to ascertain whether the warranty was true or not," that is not enough, and he must be convicted. He must **show what steps** he took. It is difficult to say what are reasonable steps to take. Naturally, to have a sample analysed would be reasonable; you can get it done by your public analyst for half-a-guinea. If you have a sample analysed out of one consignment and it is found good, I should say you need not have one analysed out of the next consignment, because you have tested the good faith of the firm with whom you deal. You may now reasonably expect that all their goods are honest.

Beyond this I cannot speak with a very certain voice. There are, of course, some rough and ready tests, or signs, well known to people who deal in various articles of food. Sometimes an article has a peculiar colour, or taste, or smell, that is not easy of imitation, even by the most artful chemist. Sometimes the quality of the article can be more or less tested by the sense of touch. In cases where these rough and ready tests are available, and the defendant who holds a foreign warranty can show that he applied them, I think he has complied with the law; for I am pretty sure he is not bound to have warranted articles analysed, though that is the very best and safest course.

THE DEFENCE OF LABELS AND NOTICES.

The essence of the offence of selling "to the prejudice of the purchaser" is the foisting on the purchaser something other than he bought. It follows, therefore, that **if the purchaser knows what he is getting, there is no offence committed.** For how shall a man say, "I was prejudiced by having foisted on me coffee-and-chicory instead of coffee," when all the time he knew he was being served with coffee-and-chicory. Let me recommend you, therefore, when you sell an article diluted, or mixed with something else (for instance, coffee mixed with chicory, commonly called "French coffee"), to

put up a notice in the shop

to that effect. For example, hang up opposite the entrance, in two or three places at the back of the counter, and in such other places as your judgment suggests, a placard in bold, plain type, readable by the shortest-sighted man who ever wore spectacles: "Notice.—The coffee sold in this shop is mixed with chicory, like the celebrated French coffee." Let these notices be so placed that no customer entering the shop can fail to see them. Then it will be a long time before you are convicted of selling adulterated coffee. But still, you will have to prove that the customer did see the notice. Another way is,

if you sell the French coffee in tins, to label each tin with a notice to the above effect.

You can make yourself perfectly safe by observing a precaution enjoined by the statute itself. That is, by delivering to the customer a **label**, either on the tin, paper package, bottle, or whatnot, or simply handed to him, to the effect that the article supplied is mixed. Then you escape altogether, unless the prosecution can prove that your mixture is *fraudulently* intended to increase the bulk, weight, or measure of the article, or to conceal its inferior quality, or is injurious to health.

In accordance with recent legislation the notice on the label must be so printed or written as **not to be obscured by other matter** thereon printed, and must be **legibly printed** or written; but if you have been in the habit of selling a mixture with a label that has been continuously in use for seven years before the 1st of January, 1900, you can go on using that label, however illegible or cryptic it may be. You may also use a registered trade mark, if you have one; but for the future you will find that the Trade Marks Office will not register a mark supposed to describe a mixture unless it is legibly printed and not obscured by other matter.

You see that your label, "This is a mixture of coffee and chicory," will not protect you if the magistrate comes to the conclusion that the chicory was put in for the purpose of fraudulently increasing the bulk or weight. And this is a question of fact, not of law, largely depending on the quantity of chicory used. Thus, a grocer named Liddiard, being asked for coffee, handed to the purchaser a packet on which was a label saying, "This is a mixture of coffee and chicory." On analysis, the article turned out to be not coffee flavoured with chicory, but chicory flavoured with coffee. Only 40 per cent. was coffee, the rest being chicory. As if one should sell you a tin labelled "salt beef," and on opening it you should find an ounce of beef embedded in a pound of salt. This was too much for the magistrates. They came to the conclusion that the chicory was **added fraudulently** to increase the bulk or weight of the coffee, and convicted Mr. Liddiard, notwithstanding the label.

Another case, where the proportion of coffee to the chicory even more forcibly reminds one of the proportions of Falstaff's bread to his sack, was also that of a grocer. He also had a label, to the effect that the article was a mixture of coffee and chicory. It ought to have stated, "This is chicory slightly adulterated with coffee"; for it was composed of 85 per cent. of chicory and only 15 per cent. of coffee! This also was too much for the magistrate, who promptly found that the chicory was added fraudulently to increase the bulk or weight. The grocer then fell back on a second line of defence, which was, that he had sold the mixture just as he received it from the manufacturer. Therefore, said he, he could not be guilty of fraud. But the second defence availed no more than the first, for

no matter who fraudulently makes up the mixture, the man who sells it is liable.

Wherefore Mr. Grocer bore the burden of the manufacturer's fraud—which is a warning to you, my reader. If you are about to sell a mixture not mixed

by yourself, obtain from the manufacturer a written statement of the proportions thereof, and a written warranty that it is as stated. Then, if he should send you anything different, and you get into trouble, go to your lawyer and tell him, and your lawyer will bring a little action for damages against him for breach of warranty. It is of no use for you to say you do not know what you are selling in your own shop. You ought to know. You ought to find out; and if you do not take the trouble to find out before you place it on sale, you may acquire the knowledge at considerable expense to yourself.

Please understand me. I do not say you will inevitably be "run in" if you sell "coffee" containing as much as 40 per cent. of chicory. But if you do sell it, you should sell it as "FRENCH coffee," not as "coffee," and should label it as such, and see that your label states that the article is a mixture. You can safely supply an article so labelled if you are asked for "French coffee," but not if you are asked for "coffee," though it contains 40 per cent. of chicory. If you keep no other quality, and are asked for coffee, you should make a practice of saying, "We have nothing but the French coffee, ma'am;" and then if the lady says, "Give me some of that, then," and you give her your mixture duly labelled, you can sleep safe from adulteration summonses.

Another article sold in a mixed state as a rule, and which ought to be labelled as a mixture, is **cocoa**. Very few cocoas are all cocoa. They generally are composed of cocoa, starch, and sugar. And so long as they are labelled as mixture, the proportion of pure cocoa in the packet may be comparatively small. It has been decided that a cocoa containing 70 parts of starch and sugar to only 30 parts of cocoa is not "fraudulent"—that is, is not added to so as to fraudulently increase the bulk or weight. It is safest, of course, to say what the mixture is. Thus, one very well-known make is always labelled at both ends, "This preparation contains cocoa combined with loaf sugar and West India arrowroot; we guarantee that no other ingredients are used." This is a very fair and straightforward label. But it would be sufficient to say, "This packet contains a mixture, and not pure cocoa."

When an article is labelled as a mixture, it is *not necessary to draw the purchaser's attention to the label*. It was once contended that this must be done; but the judges exploded that idea. I ought to say that if you wilfully give a false label you are guilty of an offence under the Act. A false label is one that falsely describes the article sold.

So much for the statutory label. But **you can protect yourself quite well without a label**. And you can do it by seeing that you give notice to your customers of the true composition of your wares. The people who do this best are publicans. In very few public-houses, I am told, can one purchase a glass of undiluted spirits. Whiskey is invariably watered down; gin also. And the publicans protect themselves in a very simple and easy manner. They put up over the bar, and in all the tap-rooms, etc., a notice to the effect that all spirits sold in the house are diluted. Suppose, then, that anyone buys spirits in a tavern where such a notice is posted, he cannot complain that the spirits were sold to him diluted to his prejudice.

A case occurred very soon after the 1875 Food and Drugs Act became law,

that will sufficiently indicate the line taken by the Courts on this matter. A man named Small had a public-house—a full-licensed house—which apparently fell under the suspicions of a local nuisance inspector, a Mr. Sandys. So Sandys thought he would sample the whiskey there. “But,” said the wily inspector to himself, “this publican may know me, therefore I will send in somebody he is not likely to suspect as being a nuisance inspector. For if I went myself he might serve me, not with the whiskey ordinarily sold, but with some purer, stronger usquebaugh kept for the occasion.” To the intent, therefore, that he might lull the publican into security, Sandys took unto him one Samuel Slack, and to him delivered a bottle. “Sam, my boy,” said Sandys, “take this bottle, go into that public-house, ask for half-a-pint of whiskey, get them to pour it into the bottle for you—here is money to pay for it—and bring it out to me across the road.” Mr. Samuel Slack did as he was bidden—went into the public-house, saw Mrs. Small behind the bar, bought from her and paid for half-a-pint of whiskey, and took it out to his employer, Sandys. Then Sandys said, “Come with me, and keep your eye on this bottle to see I do not tamper with the whiskey.” And the pair of them walked back into the public-house and into a room used as a club-room, where the first thing to catch the eye was a placard printed in bold type, “**All spirits sold here are mixed** (38 & 39 Vict. c. 63).” There was a similar placard in the bar, though Slack said he had never seen it, and another in every public room in the house, fixed straight opposite the door. Sandys called for Mr. Small, told him that he had bought this (holding up the bottle) half-pint of whiskey for analysis, and proceeded to divide the sample as the Act requires.

Well, the whiskey was 30 per cent. under proof; and Small appeared at the police-court to answer the charge of selling whiskey “not of the nature, quality, and substance demanded, to the prejudice of the purchaser.” His defence was, “There was *no prejudice*. There was a notice in the bar similar to the one in the club-room; and Slack would have been bound to see it if he had not been so intent upon watching my wife, who was serving him. Moreover, Sandys, the real purchaser, the one whom I am supposed to have prejudiced, knew the whiskey was diluted, because he saw the notice in the club-room before he took the whiskey away.” The magistrate being satisfied that Sandys knew of the notice on the placard, the prosecution argued thus: “A mere notice of this kind, by placard, is not sufficient. The publican ought, when he sold the whiskey, to have labelled the bottle, or else handed a label to Slack as required by section 8 of the Act. A label is the only kind of notice permitted by the Act; and no other kind will save the seller from a penalty.

Ultimately the case came up to the Queen’s Bench, the point being whether a tradesman who sold a mixed or diluted article was bound to give a label with it, or whether he could give notice any other way. The Court held that the **placard was sufficient**. The judges were somewhat moved by the argument of inconvenience, perhaps. For, you see, the publican’s trade is chiefly in small quantities to be drank on the premises; and if he were required to give a label every time he sold a “special

Scotch" or a "go of gin," diluted, he would never be able to sell diluted spirits at all.

Why, then, should a label ever be used at all? The answer is that it would not be possible for every tradesman to placard all his wares. Where a large variety of things are sold, it is best to have all the mixtures labelled. But where only one kind of mixture is sold on the premises, there is only need for a placard. And, moreover,

A label is safer than a placard. I will tell you why. Because if you label the mixture with a legible label, you are safe without anything further. If you merely put up a placard, "All spirits sold in this house are diluted," or "All coffee sold here is mixed with chicory and is sold as French coffee," you have got to prove that the placard came to the notice of the purchaser—that is, you must prove that the purchaser *saw the placard*. In the case of a label on a tin, or packet, or bottle, you need *not* prove that the purchaser saw *the label*.

Naturally, when a public-house has been in the habit for some time past of selling diluted spirits, the fact becomes known, and if the publican can prove that the purchaser knew this fact he will escape. It is no good for an inspector to find out some room in a public-house where no notice is up, send his spy there, ignoring notices posted up elsewhere, and then to say, "There was no notice up." For instance, one Johnson had a public-house, in the bar and kitchen of which—both public rooms—was a placard, "All spirits sold at this establishment are diluted according to price." An inspector sent two servants of his, who walked through the bar and the kitchen into the club-room, where no notice was hung. They called for half-a-pint of whiskey, and were served in the club. Then the inspector appeared on the scene, bottled the whiskey, had it analysed, and found it $37\frac{1}{2}$ under proof. Now the two men swore that they never saw the notices in the bar and kitchen. But they did not say that they did not know that the spirits sold in the house were diluted. When the case came before the judges (Lord Justice Fry and Mr. Justice Mathew), Mr. Justice Mathew said, "The purchasers' complaint is that they did not see the notices; but then there was no finding in the case whether they did not know well enough of the diluting of all spirits before sold at the respondent's house. If the justices find that the men *did not know* that spirits were sold diluted, then there should have been a conviction. But if they did know, then there should be no conviction."

DEFENCES AS TO FORM.

Another defence is that the **inspector did not "tender"** the money. To "tender" means actually to produce the money and offer it to the shopkeeper. I have dealt with this part of the subject when dealing with the taking of the sample (*see* p. 1185). I will here repeat that the shopkeeper need not name any price, unless he likes, but leave it to the inspector to tender what he thinks is reasonable. If the magistrate subsequently thinks the inspector did not tender enough, then the accused can demand to be acquitted.

I do not know why the officer should have the trouble of tendering money for an article to a man who refuses to sell the article to him. For my part, I think it a great waste of time and energy. It is a kind of fee-fo-fum—one more formality that is of no use to anybody.

Yet another defence is that the inspector did not say, "I am going to have this analysed by the *public* analyst." He must say the word "public," else he cannot get you convicted under any circumstances.

It is also a defence that the proceedings have not been commenced within the twenty-eight days allowed by the Acts; or that sufficient particulars have not been put on the summons; or the right time not allowed for the defender to prepare his defence—all of which are dealt with under Section V. of this chapter.

DEFENCES THAT ARE NOT GOOD AS A RULE.

It may be just as well to recapitulate here, in a convenient form, some of the defences that have been and to this day are set up to adulteration prosecutions, but without success.

The first is, that it is **for the prosecution to prove the guilty intent**. That is, the man caught selling adulterated goods says, "I cannot be convicted, because you cannot prove that I intended to sell them, or that I knew that they were adulterated." That is no defence at all, except in three cases, where you are charged with :

- (a) Forging, or uttering, knowing it to be forged, an alleged certificate or warranty in writing, intended to defeat a prosecution under the Acts (*see* p. 1215).
- (b) Using a certificate or warranty really given with reference to other goods—not the goods for which the defendant tries to use it (*see* p. 1215).
- (c) Giving a label with goods sold falsely describing the same—*e.g.* a label saying, "This lard is mixed with a small quantity of beef fat," when really the lard is mixed with mutton fat (*see* p. 1205).

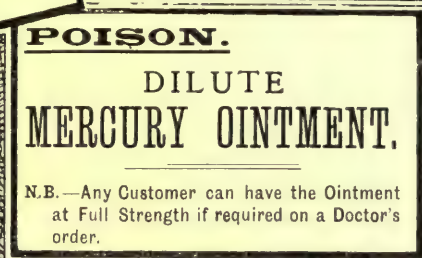
The next defence often attempted is like to the first. It runs this way: "Please your worship, I sold the goods **just as I got them from the manufacturer.**" That is no defence, except in one case, to wit :

Where you bought the goods with a written warranty, believing them to be genuine (*see* p. 1189 *et seq.*).

A third attempted "get-out" is the well-worn story, "I am **personally innocent.**" In other words, the defendant says that he can prove that he had no knowledge of the adulteration. This, again, is in general no defence, unless

- (a) There is a written warranty (*see* p. 1189 *et seq.*) ;
- or (b) Where the offence charged is that of mixing something injurious to health in an article of food (*see* p. 1171) ;
- or (c) Where the offence charged is that of doing something to take away the quality of potency of a drug (*see* p. 1171).

SAFE LABELS FOR GROCERS.



Any of the above labels may be kept affixed to tins or packets ; or kept lying loose, and pasted on the paper wrapper where the article is sold from bulk—e.g. where cocoa is sold from cocoa kept loose in a drawer.

A fourth defence is that of "My servant did it." That also is useless except

When the offence charged is under the Margarine Act (*see* Chap. II.); and there the master must prove that he neither consented to, nor knew of, nor connived at the offence.

SECTION IV.

THE WHOLESALE MERCHANT AND THE RETAILER.

Time limit hinders prosecution of merchant—Prosecution for giving false warranty—In district where goods bought for analysis—Where the merchant has the pull—How he can defend himself—Charge of giving a false warranty—Difficulty in getting samples from wholesale house—Inspector cannot make you break a tin or packet—Forging a warranty—Palming off a warranty—Time limit—CIVIL REMEDIES AGAINST WHOLESALE MERCHANTS—Breach of warranty—Warranty need not be written for this purpose—What damages recoverable—The course to adopt—The merchant's defences herein—Costs—You must have sold without alteration—A SUGGESTION.

I FEAR the system of warranting goods to be genuine will never be usual between wholesaler and retailer to the extent it ought to be, and that for many a long year yet the small man will bear the punishment the big man ought to receive. As a rule, the shopkeeper who is punished for selling adulterated food received the article from the wholesale house adulterated just as he sold it. Yet it is a rare occurrence for the wholesale man to be fined for adulteration. Why is this?

In the first place, when a prosecution is instituted in those cases where an article of food or a drug has been purchased for test purposes (that is, in every case except where the article is sold to a *bonâ fide* private purchaser for use), any prosecution in respect of the sale must be begun in 28 days from the time of purchase (*see* p. 1235). The summons itself must be returnable on or after 14 days from the day on which it is served; and within 7 days after the summons is served on the retailer he must give notice that he will rely on the warranty. Now sometimes the prosecutor has no time to consider his position—whether or not he shall prosecute the wholesaler—within the 28 days from the time he made the purchase.

Thus, food inspector buys a pound of lard on March 1st. Sends it to county analyst same day by parcels post. It arrives March 2nd. Analyst has a good deal to do; and, however hard pressed he may be, he cannot appoint a deputy. He must do the analysis himself. Say he does it complete and issues his certificate by March 8th, and sends certificate to the food inspector, reaching him on March 9th. The inspector then submits the matter to his employers—say the County Council. These gentlemen have to consider the matter—not, of course, in full council; but there is sure to be a Committee whose business it is, amongst other things, to act for the Council in these matters. The question of prosecution or no prosecution must, therefore, wait until the next meeting of the Committee, which probably sits once

a week. The day of meeting may be the very next one (March 10th), or it may be as late as March 16th. Very well. The Committee decide to prosecute. Next day, say March 14th (to strike an average), the inspector who bought the sample is sent for to go before a magistrate and give the necessary "information." He may go on that day or the next; or perhaps he is away on his duties in another part of the county and cannot be got at for several days. After that the summons must be issued by the justices' clerk; then sent to the village where the retailer resides to be served by the local policeman. And it is much if, with all the expedition that reasonably can be used, the summons is served before the 20th. Up to the 27th the retailer has time to send the notice of defence required by the Act (p. 1237). Let us suppose he sends it so as to arrive late on the 26th. On seeing the copy of the warranty accompanying the summons, the inspector sees that the retailer has a good defence. But he is not going to take proceedings against the real culprit at his own risk and expense. He is only an underling. He must lay the facts before the Clerk to the County Council, who very likely has to consult the Committee before doing anything. And the odds are just about a guinea to a gooseberry that the 29th of March has vanished into the past before a summons can be taken out. And on the 29th the 28 days allowed by the Act expire! Lucky³ for the wholesale man!

There still remains the chance of **prosecuting the wholesale man for giving a false warranty**, and I expect we shall see a great deal more of this in the future than we have done in the past. Under the Act which was in force up to December 31st, 1899, there was a provision for punishing the person who gave a false warranty in writing as to any food or drug; but a prosecution was about as rare as the Great Auk. The wholesalers, wily dogs! discovered a hole in the statute, through which they merrily drove their coach and six. Owing to the way that Act was worded, all prosecutions had to take place in the district where the offence was committed. By "district" I mean public analyst's district; *e.g.* there is a public analyst for the City of London—that is a "district"; another for the Borough of Islington—that is, therefore, a different "district."

Now the offence of giving a false warranty is committed in the place where the warranty is given to the retailer. The offence of selling adulterated food is committed in the place where the sale took place. So that if the false written warranty is given to the retailer in the City of London (if it is put in the post there it is all the same), the offender must be prosecuted in the City of London Police Court. If the retailer's shop, where the inspector buys the sample, is in Islington, the retailer must be prosecuted in Islington. The result was that the Islington authorities, having prosecuted the retailer, and having been met by the "written warranty" defence, could not summon the real culprit to come and be tried in Islington, nor could they spend public money in prosecuting for offences committed outside their district. And the authorities where the offence was committed never prosecuted, because the stuff had not been palmed off on the public in their district, or for other good reason. The gross result was that you never had a prosecution for giving a

false warranty unless both wholesaler and retailer resided or carried on business in the same district. And the nett result was that this wholesome law fell into disuse almost altogether.

But the law can now reach the wholesale man, as he will probably find to his cost if he gives false warranties. The Food and Drugs Act, 1899, contains a section put there on purpose to stop the breach through which the wholesale man once gaily tramped. It enacts that when a defendant has been acquitted by proving a written warranty, proceedings under the Sale of Food and Drugs Acts may be taken either in the district where the false warranty was given or in the district where the sample was purchased for analysis.

Let us suppose, then, that a retail provision dealer in Manchester buys one hundredweight of lard from a wholesale provision merchant in Liverpool. The merchant gave to the retailer at Liverpool (or posted at Liverpool) a warranty in writing. "I warrant that the hundredweight of lard this day purchased by you from me is genuine lard and not adulterated." The Manchester authorities send an inspector to the retailer's shop in that city to buy a sample of lard, which, being analysed, turns out to be adulterated with 15 per cent. of water. A prosecution follows as a matter of course. The retailer defends himself by producing the warranty (*see* pp. 1189-1203), and is acquitted. The Manchester authorities can order the wholesale merchant to be prosecuted in the Manchester Police Court for giving a false warranty. This new provision is a distinct strengthening of the law.

At the same time, if I had been consulted on the matter before the new Act was drafted, I think I could have suggested a little improvement. The new Act only gives power to prosecute the giver of the false warranty *after the retailer has been acquitted*. It follows that the retailer must be prosecuted in any case, else he cannot be acquitted. I think the prosecution ought to have power to prosecute for giving a false warranty without first taking steps against the unfortunate retailer who has been deceived by the warranty. I mean, that if the Manchester Corporation, in the case given above, should be satisfied that the retailer had been deceived by the Liverpool man, there ought to be power to summon the wholesale merchant to Manchester to answer for giving the false warranty without first harassing the wretched retailer by a prosecution that must fail. It might have been done in this way: The retailer might, upon receipt of the summons, be empowered to send the prosecutor a copy of the warranty, with name and address of wholesale man, as now, and the prosecutor might then have the power to drop the prosecution of the retailer and proceed against the wholesale merchant for giving a false warranty in the district where the sample was taken.

The simplest way would be that when the retailer sent the notice of defence to the prosecutor, the prosecutor should be compelled to serve a notice on the wholesale people, requiring them to be present on the hearing of the summons; and then, if it appeared to the magistrates that the retailer had been deceived by a false warranty, to give the magistrates power to fine the wholesale man instead. But the great objection to that is that so many wholesale provision firms cannot be got at; that is to say, they carry on

business abroad, and their warranties come direct from abroad. In such cases it would be impossible to work the plan suggested; and to make the law apply only to warranties given by home firms and not by foreign firms would be to give the foreigner an undue preference of a very serious kind. As it is, the foreigner gets off lightly, for the present law practically leaves him scot-free.

It seems a little bit absurd, but it is a fact that **a wholesale dealer who gives a false warranty** has a better chance of defending himself than a retailer who is accused of an adulteration offence. At one time he could hardly be touched by the authorities. Before the 1899 Act, it was decided that before a man could be convicted of this offence it was for the prosecutor to prove guilty knowledge; that is, to prove that the accused knew he was giving a warranty that was false. The 1899 Act alters this, and now it is **not necessary to prove that the defendant knew the falsity of the warranty**. But still the defendant can get off if he can show that he had "reason to believe that the statements contained therein were true." This means, in effect, that he honestly and reasonably believed his warranty to be correct.

That is more grace than the Act allows to a retailer accused of selling goods "not of the nature, etc., of the article demanded." And it was inserted in the statute to meet this case: Very often the wholesale merchant, the man who gives the warranty, is not himself the manufacturer or producer of the goods, he is merely a middleman. Take the case of a wholesale cheese factor and provision merchant. He buys butter from the dairies of Ireland, Denmark, Dorset, and Wiltshire—also Australian butter, perhaps. He gets his cheese from farmers in Cheshire and Wensleydale, and from the great factories of the United States and Canada. He makes all his sellers give him a warranty, either verbal or written, that the goods supplied are what they pretend to be. Then he gives to all who buy from him a written warranty that the butter is butter and not margarine and not watered down, and that the cheese is cheese made of milk and not of pig-fat. Some day one of his customers is caught selling watered butter, or cheese that is really margarine-cheese. He produces the merchant's warranty and is acquitted, and the merchant is summoned for giving a false warranty. He can produce his own invoice, or his own warranty from the manufacturers, and say, "I believed this to be true." If the magistrate believes him, there is an end of it; but maybe the magistrate will not. If I were prosecuting counsel, I should want to know how much the merchant paid; I should want to know whether it was a fair price to pay for a genuine article; and if I found that the merchant had paid, say, twopence a pound for stuff sold to him as butter, I should ask the magistrates to say that he could not reasonably have believed that he was buying butter at that price.

It may be asked why, if the authorities have such difficulties in prosecuting wholesale dealers for giving false warranties, knowing, as they most know very well, that a large proportion of adulterated articles of food are adulterated when they are sold to the retailers—why do not the sanitary authorities proceed

against the wholesale people in the first place? Why do they not go to the warehouses of the merchants and take samples for analysis? I will tell you why. Except in the case of butter and cheese (*see* Chap. II.), all samples must be purchased. The wholesale merchant sells in large quantities, as a rule. He sells by the ton or the hundredweight. If, therefore, a food inspector sent a man in to ask for a small quantity, the suspicions of the merchant would be at once aroused. He would have a pretty good idea who the man was, and would take precious good care, if he supplied him at all, to let him have a genuine article, or else he would refuse to sell him any.

I think I hear an ejaculation from Spicer, the grocer at Puddleham-under-Stake—the man, I mean, who had a visit from an inspector of the Somerset County Council last month. The wretch asked for half a pound of butter, and poor Spicer, knowing full well that he had nothing in the shop except margarine (duly labelled) and butter that had been carefully kneaded with skimmed milk so as to make less of it go to the pound; and knowing his visitor from having once seen him at the Petty Sessions, said, "I haven't any to sell—I'm out of it." Whereupon the inspector, pointing to a little stack on the shelf behind the counter, said, "I *must* have some—and be quick about it. I am Inspector Sharp, of the County Council staff, and I want it for analysis." And Spicer hesitating, Mr. Inspector hastened his movements by remarking, "If you do not supply me with the sample you are liable to a fine of £10." Whereupon the wretched grocer weighed out a pound, and then—but we will draw a veil! And now Spicer reads what I have written, and jumps; and says, "Was that villain who got me fined £20 and costs telling me a lie when he said I must sell him a sample?" Not at all, good Spicer; he was a man of truth.

And this is the way of it. The section of the statute (s. 17) which would have fitted your case is to this effect: A duly authorised person who applies to purchase any article of food or drug (now mark me well—food or drug, I say),

Exposed for sale, or

On sale by retail on any premises, or in any shop or stores, or in a street or open place of public resort,

must be supplied with what he asks for, under penalty of £10.

Now do you see where the wholesale man gets off? Nine hundred and ninety times out of a thousand he does not keep his goods "exposed for sale." He may keep samples in the rooms where his customers go to see him. Some houses do. But the samples are not exposed for sale—they are for the customer to look at, to taste, to smell, to handle, so that he may see if he is going to have any. Understand that, if the wholesale dealer does keep anything exposed for sale, he is just as liable to be sampled as you are. That is what happened to a certain farmer in Ireland who was selling butter wholesale at a butter market in a country town. The butter was there in bulk, contained in firkin tubs; as, I believe, the custom of the country is. An inspector went up to the farmer and asked him for a pound. "Not a

bit of it," said the farmer. "I will sell you a firkin; but no less." And he added, "At this market we always sell by the firkin, and we never break bulk"—which was quite true. As the seller refused to sell, the inspector prosecuted him for the refusal; and it was decided by the Irish Courts of Law that as the butter was exposed for sale, it did not matter whether it was for sale by retail or wholesale.

Besides, Mr. Spicer, not only was your butter exposed for sale, but it was *on sale by retail*, which cannot happen in the case of a wholesale merchant, unless he is a retailer also. The difference between "exposed for sale" and "on sale" is, that in the one case the goods are shown to the view of the customers in the shop; "on sale," on the other hand, merely means that you have it in the shop, or in the room behind the shop, or in the cellar underneath, not necessarily visible to customers who enter the shop, but ready to be sold to those who ask for such articles.

I need hardly say, perhaps, that when you are prosecuted for **refusing to sell a sample**, it is no defence for you to prove that the article asked for was pure and unadulterated. It is a defence that the buyer refused to pay a reasonable price. And nowadays it would be impossible for the case of the Irish farmer to happen if the worthy farmer cares to keep his butter in firkin casks labelled "Butter," and offer it for sale that way. It used to be one of the hardships of the law that a food inspector could go and ask for **a sample out of a tin or packet**. This had two effects—one was to make the seller break bulk, and perhaps spoil the whole packet; the other was to put the seller at a disadvantage if the article was a mixture. For example, you sold "French coffee"—that is, coffee mixed with chicory. You sold it in tins labelled, "This coffee is mixed with chicory, and is sold as French coffee." An inspector's spy came in and asked for "half a pound of coffee." You said, "I have no half-pound tins left—only pound tins." He then disclosed that he was purchasing for analysis, and you had to break open a tin and give him half a pound, which you very likely wrapped up in a paper for him. Then you were summoned for selling a mixture of coffee and chicory for coffee. Now if the purchaser had taken the tin, he must have produced it in court, and the label would have exonerated you, provided there was no actual fraud (*see* p. 1204). But as in your hurry you probably forgot to give him a label—and never thought of taking out half a pound and giving the inspector's man the tin with the balance—you were convicted. That was very hard indeed; and it was done so often that people began to think it was being done to trip up retailers. The Select Committee of the House of Commons took that view—at all events, they advised Parliament to put an end to a state of things where such tripping was possible; so the law has been altered, and grocers who have suffered in the past will be glad to hear that where articles of food are exposed for sale in *tins or packets, unopened and duly labelled*, you can refuse to open the tin or packet to get a sample out of it.

Perhaps the **chemists and druggists** of these islands will find the new provision about the opening of tins and packets more useful than anybody

else. Not that they are greatly addicted to selling adulterated drugs, but that they sell a good many things ready made-up; and it was a serious loss to have to break open a packet in order to sell half an ounce of its contents—all the more annoying, perhaps, if the drug or mixture was perfectly good and genuine. But let me return to my statement of the law as it concerns the dealings between the retailer and the wholesale dealer.

To go back to this question of the written warranty of quality. One of the difficulties of the situation, from the point of view of the public, is the difficulty of establishing any connection between the warranty produced by the tradesman and the article bought by the food inspector. Inspector buys a pound of lard, and prosecutes shopkeeper because there is 15 per cent. of added water. Shopkeeper produces a document signed by a wholesale firm, warranting as pure and unadulterated lard a certain one hundredweight “this day sold to you.” This document is dated June 10th, and is addressed to the shopkeeper. The sample is bought on June 15th. Now how in the world are the public authorities to find out to the contrary if the shopkeeper swears that the sample was cut off the one hundredweight of warranted lard? It may, in fact, have been cut off quite another lot—bought without any warranty at all. It may be that the warranty was given by a firm not easily get-at-able—e.g. an American firm. It may be that the warranting firm do not take the trouble to come up to hear the case against the retailer. It may be that the warranter is an ignorant person—poor, perhaps, also—who does not, or cannot, employ skilled assistance. So the retailer rides off on a warranty that was never given in respect of the adulterated lard at all.

I say he may ride off. So, also, he may not. If he is caught at the game, he will not only be found guilty of selling adulterated lard, and fined heavily, but he will also be prosecuted for **trying to palm off the warranty on the wrong goods.** And he will be liable to be fined £20 for the first offence, £50 for the second, and £100 or three months’ hard labour thereafter.

Forging a warranty is a much worse offence—in fact, it is regarded as a crime, and is punished with imprisonment without the option of a fine. Two years’ hard labour is the maximum sentence. And let me say that forgery does not merely mean imitating somebody else’s signature. If I give you a warranty for lard dated “12th April, 1901,” and you alter it to “12th April, 1902,” that is a forgery. If I give you a warranty for so much “lard,” and you alter it to “butter,” that is a forgery. In fact, any material alteration is a forgery. Of course, that being so, the concoction of a whole warranty is a forgery. It is not generally known, perhaps, but you can commit a forgery with a printing press just as much as with a pen; and a retailer who has a lot of labels printed, pretending to come from the producer, is a forger. It is an equal offence knowingly to use a warranty that someone else has forged.

You will see on p. 1235 that in certain cases prosecutions must be started within 28 days of the offences. Now the 28 days’ limit does not apply to prosecutions for giving a false warranty, though on one occasion the whole-

sale dealer contended that it did apply. That is, he said that if he were to be summoned for giving a false warranty, he must be summoned within 28 days after the food was bought for analysis. The facts of the case were that a firm of retail milk-sellers, M. A. Brown & Son, were summoned for selling milk adulterated. They proved that they had bought the milk from one White, a wholesale dairyman, and had a written warranty from him of the genuineness of the milk. The milk was bought for analysis on April 28th, the summons against M. A. Brown & Son was issued on May 10th, it was heard on May 24th, and, the defendants being acquitted, the police promptly summoned White for giving a false warranty. This summons was served on May 28th—more than 28 days after the milk was bought from Brown's for analysis. White set up that he was protected by the time limit.

The magistrate held the same view, and acquitted him; but the prosecutor appealed to the High Court, and the High Court upset the magistrate's decision. Lord Justices Lindley and Kay were the judges, and they made mincemeat of White's defence. They pointed out that the time section only applied where the person from whom the food had been bought for test purposes was summoned. Now nothing had been bought from White for test purposes. He was summoned under quite another category. "It would be absurd that a summons for giving a false warranty should be required to be served within 28 days of the original sale," said Lord Justice Lindley. And he was right. Just imagine! A manufacturer in the south of England, say Wiltshire, sells butter to a retail provision merchant in Carlisle with a written warranty. The authorities in Carlisle purchase a sample for analysis. They have to get it analysed, serve a summons on the retailer, wait until that summons is heard (and it may be adjourned from the day originally fixed), and after the retailer is acquitted they must serve a summons in Wiltshire on the manufacturer. Now the case against the retailer cannot be heard until 14 days after the summons is served on him—so that leaves another 14 days for the purchase, the analysis, the sending of a summons to Wiltshire, and the service of it on the manufacturer. The law is bad enough as it is in this respect, but if the law were as it was contended, the false warranty section would be a dead letter.

Having dealt with the positions of the wholesale merchant and the retailer as regards prosecutions under the Food and Drugs Acts, I should now like to discuss the position of **the wholesaler and the retailer as between themselves**. If a wholesale merchant has sold to you adulterated butter, and you, believing it to be good, have sold it as sound butter, and have been prosecuted and put to annoyance and expense, and probably loss of custom, have you any remedy against him? If he has given you a written warranty sufficient for the purposes of the Acts, and that warranty turns out to be false, you may get off and he be fined; but that is small comfort to you, when you have been in the police court, when your case has been published in the local papers, and when it has been proved that (although you knew it not) you were in fact selling adulterated butter.

Even more important is it for you to know whether you can do anything

when the wily rogue has taken precious good care not to give you a formal warranty. You have said, perhaps, to the traveller who took the order, "I suppose your firm guarantees this butter to be pure and unadulterated?" The traveller has said "Yes!" and has seemed half offended at the question. No written warranty, though. And the magistrates said, "The public must be protected against fraudulent tradesmen who sell butter weighted with 20 per cent. of water. It is a shocking thing that the hardworking labouring classes should be cheated in this way"—with a variety of other remarks of a general character, but with a most particular and personal application. And you have heard that your rival, the despicable Gricer, whose shop is up the street a little way, said to Mrs. Soal, the shoemaker's wife, when she asked for a pound of butter, "Butter, ma'am?" said Gricer. "Yes, ma'am, certainly; and this *is* butter, ma'am. *It* hasn't been watered. No, no! The nuisance inspector may come here as often as he likes. He has been here a time or two, but *I* was never summoned." Which remark, having been duly reported to you by the wife of your bosom, to whom Mrs. Soal lost no time in conveying the same, made you think, first, of punching the head of Gricer—but then, he is as young a man as you, and, apparently, as supple; then, of actions for defamation of character—but then, how could you prove he referred to you? Also, lawyers bills are terribly heavy—you have not yet paid Messrs. Sele & Wacks their little bill of costs over that adulteration case yet. Moreover, the £20 fine and £4 12s. 6d. costs you had to pay to the prosecution have left you without much money to throw away in mere schemes of revenge.

Gradually you forget the malignant Gricer, and fall to thinking whether you can "take it out of" the wholesale firm who are at the bottom of this mischief. You feel that you must do something. You must try to make them recoup you for the losses you have already sustained, and you must try to rehabilitate your character with your customers, who, alas! are not so numerous as they were. Many thrifty housewives who formerly came to your shop now frequent Gricer's Stores for all their household necessities and luxuries. **Can you hit the wholesale firm?** If so, how? And to what extent can they be made to recoup you your losses? Listen, and I will tell you.

A warranty of the purity of goods sold may, except for purposes of the Food and Drugs Acts, be just as effective if verbal as if in writing. The traveller who told you that his firm guaranteed the purity of their butter, thereby warranted that the butter to be sent to you should be unadulterated. So that, although such a warranty, being verbal, was of no use to you at the police court, it can be used against the wholesale firm whose agent gave it. Therefore you have a remedy.

The great stumbling-block in your way, when you wish to prove a verbal warranty of quality, is the fact that it was verbal. That is a matter of evidence. It is entirely for the Court to say whether you tell the truth or not when you inform them of your conversation with the representative. He will probably deny it stoutly. His masters will very likely say he had no authority to give any warranty or representation; but if you have the good fortune

to get before a jury of your fellow-countrymen, you will probably be able to convince them that he did make the representation. The Court will, in some degree, be influenced by the price you paid. As I have said before, if you buy an article at such a price that it could hardly be a genuine article, you will find it difficult to persuade a jury to believe either that you believed it to be genuine or that it was warranted genuine. But that is all a question of evidence—of credibility—of whether the judge or jury do believe your account. On the other hand, if you have given a good price, common sense tells one that you expected to get a good article, and it is only one more step to being persuaded that the article was represented to be genuine.

If I were *a retailer to whom a verbal warranty had been given*, and I was subsequently summoned for selling an adulterated article, I will tell you what I should do. I should sit down at once and indite a letter to the wholesale house, something like this:—

“141, High Street, Dingley Dell.

“August 4th, 1902.

“To Messrs. Phatt, Greece & Co.,

“Wholesale Provision Merchants,

“200, Blank Street, E.C.

“Gentlemen,—On the 20th ult. I received from you a consignment of one hundredweight of lard which I ordered from your traveller, Mr. Glibber, on the 17th ult. When I ordered the lard I asked Mr. Glibber if the lard was guaranteed genuine, and he informed me that it was. I should not have ordered it unless he had made that statement. On the 22nd a food inspector took a sample for analysis, and to-day I have received a summons, accompanied by the public analyst's certificate, of which I enclose a copy. If the certificate is true, the lard was adulterated. What do you propose to do? If you like, I will send you the part of the sample left with me by the inspector, so that if you deny the adulteration you can have it analysed. I beg to suggest, also, that as you have got me into this mess, you had better get me out of it, or try to, by engaging a lawyer to defend me. Failing this, have you any other suggestion to make? An early reply will oblige, as the summons is to be heard on the 20th.

“Yours truly,

“JAMES BOUJAN.”

Keep a copy of this, and keep the reply of Messrs. Phatt, Greece & Co. They may admit your statement as to the guarantee or warranty having been given, or they may deny it. Even if they deny it, you have gained something by putting your case on record at the earliest possible opportunity.

It may assist you greatly if you have an invoice in plain, unmistakable terms—an invoice which is not necessarily a written warranty sufficient to satisfy the Act, but one from which it would almost irresistibly be inferred that the lard had been sold to you warranted pure. Even a label such as Grimble's vinegar label may help you ; because as between yourself and the

wholesale firm you are entitled to rely on any warranty, implied or express, and if expressed then verbal as well as written.

Assuming, then, that you have evidence of some sort of warranty of genuineness, also that you are convicted and fined—what then? Well, you can safely instruct your solicitor to begin an action against the wholesale firm for breach of warranty. If they are the manufacturers, you may be able to bring an action against them for fraud. The difference is, that in the latter case, if you win, you will get heavier damages. At Common Law, your damages would be (a) the difference between the price you paid and the value of the adulterated article; adding (b) the damage done to your trade by your having sold adulterated goods. I have heard it doubted whether you could recover the latter; but I think you could. You see, legal damages are those that flow as a direct and natural consequence from the act complained of. Here the act complained of is a breach of contract—supplying adulterated stuff instead of genuine. But the seller knew that the buyer wanted it to sell again. He knew that the buyer kept a shop; and he must, I think, be taken to have known that a shopkeeper who sells adulterated food is bound, in all human probability, to lose custom. I have heard it said, “Oh! the loss of trade was in consequence of the prosecution and the publicity in the press; and how can you say either of these events are the natural outcome of the sale of adulterated goods by the wholesale house?”

I agree, as a lawyer, that this contention is not without weight; but I do not think it quite solid enough. Suppose there had been no prosecution, but that a customer had found out the adulteration, and had told other customers, in consequence whereof said customers left the shop never to return. Could it be contended here that the cause of loss of trade was not the fact that you sold adulterated goods? I think not. Now if you insert this argument, “The cause of the loss of trade was the discovery made by the customer, and the noise she made about it,” you will be able to apply this illustration to the other case. Charles Peace murdered Dyson. Charles Peace was at last discovered. He was tried, convicted, sentenced, and hanged. Why was Charles Peace hanged? Because he murdered Dyson? Or because he was discovered? Or because he was convicted? Or because he was sentenced? Surely the answer is, “Because he committed murder.” The cause of the end he suffered was the wrongful act he had done. And in my opinion the cause of the loss of trade in the case of a tradesman convicted of adulteration is the selling of adulterated goods—the offence he has committed. That is the real cause; and that is why, in my judgment, a retailer who buys goods with a warranty from a wholesale firm who knew he was a retailer, can make that wholesale firm compensate him for loss of trade suffered by him through selling their adulterated stuff and getting convicted.

About one thing there can be no doubt. Given the following facts,

- (1) *Sale* of adulterated goods by wholesale house to retailer,
- (2) *Warranty* (verbal, written, or implied) that such goods are genuine,
- (3) *Prosecution and conviction* of retailer for selling same goods,

there is not a doubt that by the statute of 1875 the retailer can recover from the wholesale house—

- (1) The amount or the fine he was sentenced to pay,
- (2) The costs (or expenses) of the prosecution that he had to pay (if the magistrates ordered him to pay them),
- (3) The expenses (or costs) he was put to in defending himself against the charge.

The last-mentioned item does not include anything for his own time and trouble. It means his lawyer's bill, if he employed a lawyer; the amounts paid to witnesses whom he called; and his own actual out-of-pocket expenses for travelling. So, you see, if you had a warranty with the goods, even though not a written one, you should employ a lawyer—in the end you will make the wholesale house pay him. That is, you will pay him at first, and will recover the amount from them as I have said.

The above statement must be taken **with a qualification**. It is a rule of law in most countries, certainly in the United Kingdom, that a decision given in a case to which a man is neither "party nor privy" does not bind that man. What do I mean by "party or privy" I can, perhaps, best explain by an illustration. Alpha brings an action against Beta, and wins. The point in dispute is whether Beta trespassed on Alpha's field. Beta says, "It is not your field; it is mine." But the Court decides that the field is not Beta's, and awards to Alpha damages for the trespass. Beta, having lost, cannot say, in future, that the field is not Alpha's field; because he was a "party" to the action. Neither can Beta's heir subsequently put in a claim for the field as against Alpha or Alpha's heirs, because Beta's heirs are, in the language of English law, "privies." Their claim comes to them because they are Beta's heirs; and if Beta had no right, neither can they have. But the decision in the case of Alpha *v.* Beta does not affect Gamma, who is a stranger to them both. Gamma, if he thinks the field is his, can take action to claim it; and it will not avail Alpha to say, "This field was declared to be mine in another action." Gamma's answer is clear—"That action was not my action. I was not concerned in it. My title to the field cannot be affected because some outsider chose to claim it, and failed."

To apply this to the case of wholesaler and retailer. If a retailer has been convicted of selling adulterated goods which he bought from the wholesaler with a verbal warranty, that conviction does not bind the wholesaler. If the retailer brings an action (as above) for breach of contract, the wholesale merchant may show, if he can, that the conviction was wrong. Let us suppose, for example, that a grocer sells a packet of Epps's Cocoa, which, as we know, is not pure cocoa, but a mixture of cocoa, arrowroot, and sugar. He is summoned for selling "an article of food"—to wit, cocoa—"not of the nature, substance, and quality demanded by the purchaser." If he sold the cocoa in the packet, he has a good defence in law, because on the packet is a label stating of what the contents consist. Now suppose the retailer is convicted by the local justices—some country Benches do very queer things,

sometimes—and then he brings an action against Epps. Epps has a good defence to the action. He can show that the local justices were wrong, and that they never ought to have convicted the retailer at all. Why should he suffer, merely because the retailer has suffered by reason of the ignorance of the magistrates?

I have dealt with the case of the retailer who has been convicted. Now let us see what happens when he is acquitted. If the warranty is a written warranty of the kind indicated on pp. 1189-99, he will, no doubt, be acquitted. But he has been put to expense over it. He has, if he was a wise man, employed a solicitor to defend him; and the costs of his defence come to, say, five pounds. Can he make the wholesale merchant pay him this? In my opinion he cannot. All he can do is to ask the magistrates to allow his costs against the prosecutor. And that, by the way, is a thing magistrates are not very willing to do. I think they ought to; but some Benches make it a rule not to allow the successful defender his costs against a public authority.

But as to the amount of the costs. If a retailer has gone to an unreasonable amount of expense in defending himself, he cannot recover that amount. He can only recover what was reasonably spent by him in his own defence. Suppose, for instance, he saw fit to have several barristers or advocates to represent him. I think he would not recover the costs of more than one, or two at the most; and then only if the prosecution were a very important one. Again, suppose the magistrates were to allow the prosecution an excessive sum for their costs, the wholesale man would not have to pay the excess. Thus, if in a prosecution for selling adulterated butter the prosecution proved their case, and were awarded costs against the retailer; and the prosecution had summoned as expert witnesses half-a-dozen eminent chemists, and as many more eminent doctors from all parts of the country, and had paid them 50 guineas each for their services—they probably would not go for less, and maybe not for so little—the bill for witnesses would be 50 guineas \times 12 = 600 guineas. Well, they probably would not order the retailer to pay all of it. But suppose they said, “We fine the defendant £20, and £100 costs.” I think such costs would be unreasonable; and if the retailer tried to get them out of the wholesale merchant he would not succeed. As the old saw has it, “There’s reason in all things.”

In order to make sure of getting your fine, costs of prosecution, and costs of defence out of the wholesale man, you must be prepared to prove your case. And your case must be—

(1) that the article (or drug) on which you were convicted was sold to you as being of the nature, substance, and quality demanded of you by the prosecutor;

(2) that you bought it not knowing it to be otherwise;

and (3) that you sold it in the same state in which you purchased it.

That is to say: You have been summoned and convicted for selling to John Smith a pound of lard “not of the nature, etc.” of lard, but containing 5 per

cent. of beef-fat. John Smith asked you for "lard." You sold the stuff as as "lard." You must prove in your action against the wholesale firm that you bought the stuff from them as "lard." That when you bought it you did not know it was anything but lard; and that you sold it just as you received it, without any private alteration of your own.

The last point is one requiring a word or two. You may be able to prove that you did not put any beef-fat into the substance; but that does not prove your point. For although you did not do that, possibly you put in something else. Possibly you added some water. "Well," you say, "what if I did? I was not convicted for the added water." Quite true. But if you added water, how can you say you sold the stuff in the same state in which you received it? A good case in point is one upon which I was once consulted—not by a client, but by a young friend who had been a pupil in my chambers. He came to me in great perplexity one day, and propounded the following conundrum:

A retail milkman—call him Pales—bought milk from two farmers, Giles and Yeoman (fictitious names, of course). From each he received a written warranty, "Pure new milk with all its cream." Luckily for Pales, he took a sample from each consignment, and bottled it. One of his men had three churns in his cart; two were of Yeoman's milk, and one of Giles's. He sold, not direct from the churns, but from a smaller can which he filled out of the churns. As he was walking with the can to a customer's door, a milk inspector came and took a sample from it. Now it happened that, Giles's churn being almost empty, the man had put the last few pints of it into his can, and had filled up with Yeoman's milk, so that the sample was part Giles's and part Yeoman's. Pales has now got a summons for selling milk not of the nature and quality demanded. The stuff was watered. He had sense enough, when he heard of a sample having been taken, to have his own two samples tested, and it turns out that Yeoman was the sinner. Giles's milk was right enough. Has Pales any defence?

I promptly said "No! Because he did not sell the milk—that is, Yeoman's milk—in the same state as when he purchased it." My young friend objected, "That is so. But he made it better. He put good milk into it." "No matter," I replied. "The point is whether he sold it just as he bought it. Well—he clearly did not. If I were you, I'd advise my man to throw himself on the mercy of the Court—explaining the circumstances." "Another point," my interlocutor added, "is whether Pales can sue Yeoman for damages for breach of warranty." "I think he can," I said; "he can sue him just as in any other broken contract. But he cannot recover the fine and costs he will have to pay, nor his own costs of defending the adulteration summons; and that for the same reason that he is debarred from using the warranty at the police court—he did not sell the article as he received it from Yeoman." I am sorry to say that the case was never fought. Yeoman did not face the music; he paid up.

But the moral is, do not mix. If you have two lots of lard, both warranted pure, or two lots of butter, both warranted, or two lots of anything, both warranted, do not mix them. Sell each lot as you receive it, and separately.

It has been suggested—and was suggested on behalf of the retail traders of the country before the Select Committee of the House of Commons—that retail traders do not like to ask for an out-and-out warranty of genuineness from their wholesale merchants. This is especially so when, as often happens, the retailer is under some obligations to the merchant. When you owe a man money continually, and may have to ask as a favour that he will let you have more time to pay it beyond the usual period of credit, you may feel some difficulty in the matter; and, I have often heard it urged, to ask a man who offers to sell you goods whether the goods are genuine implies a doubt of his honesty.

This is all very well. But I have pointed out the risks you run if you do not have a written warranty with all the goods sold to you: fines, costs, imprisonment. For my part, I would rather wound a man's pride several times than be convicted of adulteration once. I beg to throw out

A SUGGESTION TO RETAIL GROCERS, MILK-SELLERS, AND PROVISION DEALERS.

It is this. Use an order form for ordering all your goods. You can get one made with perforated counterfoils, like a cheque-book. And have printed on it, "*This order is subject to a written warranty of genuineness accompanying the goods.*" I do not see how the merchant can grumble at that; for he will see that you make a practice of requiring a warranty, and not from him alone. (*See also the form accompanying.*)

The warranty given may be written **on** the invoice, but see that it is not written **in** the invoice. Thus:

"*Mr. Dones, grocer, Slateville.*

"Bought of

"William Jones, Wholesale Provision Merchant, London,

"1 cwt. warranted pure lard at 60s.

£3 0 0

will not do. But

"*Mr. Dones, grocer, Slateville.*

"Bought of

"William Jones, Wholesale Provision Merchant, London,

"1 cwt. lard at 60s.

£3 0 0

"*This lard is warranted genuine and unadulterated.*

"W. J."

will be enough to carry you through.

HOW TO MEET UNSCRUPULOUS RIVALRY AND CHECKMATE THE FRAUDULENT WHOLESALE.

It has occurred to me that in one of the provisions of the latest Food and Drugs Act there may be some comfort and aid for the honest tradesman who has been suffering for a long time. In many districts he has been suffering to an alarming extent. For there have been boroughs and counties—

especially small boroughs—where the Adulteration Acts were practically a dead letter. The worthy town councillors, having taken it into their heads that the laws against the adulteration of food were mere vexations to traders, never put them into force. In some cases they never even appointed a public analyst. Curiously enough, these districts were almost invariably districts where most of the power was in the hands of the shopkeeping community; and all, or nearly all, the worthy councillors kept shops. A coincidence, no doubt.

But if the Local Government Board and the Board of Agriculture do their duty, these coincidences will now cease to coincide. First of all, these two Departments can themselves appoint—nay, have already appointed—inspectors to take samples. The samples thus taken are to be analysed by the local public analyst; and then the local authority is to have the duty and power to prosecute; moreover, the local authority will have the pleasure of paying the analyst's fee.

More than this, the worthy councillors will have to appoint a public analyst; or they will probably find themselves in the Courts, as were certain guardians who declined to appoint a vaccination officer. And on top of all this, if the Local Government Board or Board of Agriculture find that a local authority is not enforcing the law in its district, the Board may appoint an officer of its own to do so. This officer will then take charge; and it is to be hoped he will make things lively. The local authorities will not save anything by not doing the work themselves; because they will have to pay every penny of the officer's expenses.

Now it frequently happens that there is in a town a grocer or provision merchant who "cuts" all the others. He sells this a penny cheaper; that a halfpenny. And his brethren of the trade know perfectly well he can only do it either by selling short weight or by adulteration. Of course, one of them could very soon bring him to book by constituting himself an inspector—that is, by buying an article for test purposes—in which case he would have to be sure to follow the formalities prescribed on pp. 1225 to 1233. But very few people care to act the part of "common informers." It is not an enviable part to play. But now, if the grocers of a town who try to make an honest living find themselves aggrieved by a rival who lives by cheating, and damages them, I should advise them to communicate with the Local Government Board or the Board of Agriculture. Let a letter be written, headed *Confidential*, to the Under-Secretary of either Board, stating the facts. If it is a fact, as it often is, that the swindler is on the Town Council himself, or has friends there—say so. Tell the Department that you have good reasons to believe that this man habitually sells adulterated stuff. It might be as well to buy a few suspected articles at his shop, and have them analysed by the local public analyst, to whom you need not divulge the name of the seller. If the facts appear to be as you suspected, forward the certificates to the Board with your letter. Add that you do not want your name to be mentioned in the matter; but that perhaps the Board can take steps, as it has power to do, under the Food and Drugs Act, 1899. Your fraudulent competitor will probably hear something shortly.

SECTION V.

THE COURSE OF PROCEEDINGS UNDER THE FOOD AND DRUGS ACTS
(INCLUDING THE MARGARINE ACTS).

Who may enforce the Adulteration Acts—Person purchasing for test purposes—Who may act for local authority—Inspector may employ servant or agent to purchase—The reason why—The boy messenger—How the purchase must be made—Inspector, etc., not obliged to show his authority—A sample from a special bottle—The inspector who knew what good rum was—How the publican could have escaped—Difference between public officer and private informer—The Butter Association—Refusing to sell—The virtue of chosen language—What is "forthwith"?—A matter of days?—Minutes?—The bottle of gin between two—A nice point—Tampering with the sample—Dividing the sample then and there—SAMPLES TAKEN IN COURSE OF DELIVERY—How different from the former case—Applies to all food articles—Formalities not necessary—The Coventry farmer—The Glasgow case—No private person can take a sample in this way—THE ANALYSIS—Sample to be analysed though guilt admitted—Only public analyst of district can do it—Who is that personage?—THE COURT PROCEEDINGS—When and how they begin—What to do after the summons is served—Depends on the plight you are in—Four states of the case—Get your sample analysed—By whom—Send copy of certificate to prosecutor—The uncertainty of some analyses—How to take the benefit of a written warranty—Notices you must give—When to give them—The warranty itself not enough—Your evidence—Certificate of public analyst not conclusive if contradicted—The Court may have a Government analysis made—And must if you ask them—A sample of scientific evidence—Bothering the magistrates—Government analyst's certificate not conclusive, but of great weight—Proper form of public analyst's certificate—His opinion not enough without facts—Bad certificate kills the prosecution—PRIVATE PURCHASER PROSECUTING—No formal purchase required—No limit of time for commencing proceedings—No necessity for analyst's certificate—The Louth Guardians and the paupers' butter—Private prosecutor may prove his case anyhow—PAINS AND PENALTIES—Fine generally varies according to number of offences—Costs—Exceptions to the general rule—Appeals—When the defendant has an advantage.

SHOPKEEPERS should remember that they can be prosecuted by private persons, as well as by the local authorities, the Board of Agriculture, and the Local Government Board; for the law is that any purchaser of an article of food or a drug may prosecute under the Acts.

The law varies—or, rather, the procedure to be followed varies—according to whether the person prosecuting is a real customer, or is merely someone purchasing for analysis. I will deal, in the first place, with

A PERSON PURCHASING A SAMPLE FOR TEST PURPOSES.

And I begin by saying that this part of the chapter applies just as much to a private person who purchases for analysis as to a public officer who purchases with the like object. The Butter Association and other bodies that take an

interest in these matters, occasionally send round people to make test purchases of butter and other articles of food. And as these are not *bonâ fide* customers—purchasers who buy the food not for use, but for test purposes pure and simple—they must observe the same routine as must the inspector of nuisances, constables, and other persons specially appointed by the local authority. So also must inspectors appointed by either of the two Government departments named above.

The local authorities cannot authorise anybody they please to buy samples for analysis; the statutes strictly limit their choice. The persons appointed may be the medical officer of health, inspector of nuisances, inspector of weights and measures, inspector of a market, or police-constable. These are the only ones who have the right to act on behalf of and at the expense of the local authority. By "local authority" I mean the city, town, county, or borough council which has, in any particular district, the duty of employing constables or such inspectors as are named above.

There can be no doubt that the inspector, etc., authorised by a local authority or a Government department to carry out the Acts may employ an agent or a messenger to make purchases of samples for him. The principle is the ordinary principle of agency. As a rule, according to our law, a man may do by the hand of his agent or servant anything he may himself do. And the thing done is said to be done by the employer. If in doing that thing the agent or servant does any injury to anybody, the employer is liable for it. Equally, he may take the benefit of anything done for him. If I send my housemaid to a grocer's to buy a pound of tea, the act is mine, not hers; she is not the purchaser, I am. If she gets it on credit, I have to pay. But it was questioned once whether an inspector, etc., appointed to purchase samples could hand over the job to anybody else. The reason was because, as a rule, a man to whom power or authority or a duty is delegated by another, cannot depute someone else to exercise the power or authority or to perform the duty. This reason was urged against the employment of agents by inspectors under the Food and Drugs Acts.

But those who urged it forgot that where it is, in a business sense, impracticable for the person appointed to do every detail of the work himself, he may employ others to do the details. Thus, if I appoint a man, my solicitor, to bring an action for me, he may hand over the details to his clerks—copying documents, serving writs, and so on—because it would be impossible for a solicitor to carry on his business otherwise. So with regard to inspectors under the Acts we are now considering.

There was a case once where one Samuel Toy went into the shop of a lady named Agnes Scott, and asked for two ounces of coffee. Little did she know that Toy was the servant of Horden, food and drugs inspector for those parts. Had she known, she probably would not have sold him two ounces of coffee mixed with chicory in a packet without a label. She was somewhat astonished when Toy observed that he had bought the substance for analysis by the public analyst. As a sort of attempt to make a loophole of escape, she said, just as Toy was leaving the shop with his capture, "That

is a mixture of coffee and chicory." This, of course, was too late (*see* p. 1148) to save her. Toy took his sample to the inspector; the inspector had it analysed; and Agnes Scott was ultimately convicted.

She pleaded in her defence that Toy was not a person such as is mentioned in the Act, and that he had no authority from the local authority to purchase the sample. But the judge said it did not matter. Mr. Justice Field put it this way: "Officers such as inspectors of nuisances, or inspectors of weights and measures, have numerous duties to perform; and if we held that to procure a sample the inspector must personally visit the shop, we should limit the operation of a very beneficial Act." There is also the consideration that an inspector soon becomes known, and after a very short tenure of office would not be likely to be served with a true sample.

Not only can the inspector employ an agent, but the agent can employ a messenger; at least, so it was decided in a Scotch case. There an inspector sent an agent to get a sample from a certain shop. The agent got hold of a boy, and gave him money, and said, "You go into that shop and ask for one pound of butter." The boy did, being doubtless stimulated by prospect of gain. Thoroughly beguiled, the shopkeeper served the lad, putting down the butter on the counter and picking up the money. Then, suddenly, enter the agent! He put his hand on the sample, and observed with great majesty, "I have purchased this for analysis by the public analyst." The analysis being against the shopkeeper, that worthy tried to escape by saying that the way in which the sample was purchased was illegal. But the Court of Session would not have it. The agent was quite entitled to employ a messenger, they said, and they convicted the grocer.

I will next ask myself, and try to answer the question, **How must the purchase be made?** The answer is that the inspector, etc., or person sent by him, has merely to come into the shop and ask for what he wants, and you are bound to supply him. I am not sure, even, that he is bound to tell you that he has authority to buy samples of food and drugs. If he says, "A pound of butter," and you say, "I shall not sell you any," I think he can walk straight out and summon you for refusing to sell (*see* p. 1184). As a rule, however, he does not do that. He says, "I want it for the purpose of analysis by the public analyst." Suppose he does say so.

Can you ask him to show you his authority? A learned judge once said he thought you could, if you asked him early enough. But as in that case the inspector never was asked, the point did not properly arise, and cannot be said to be decided. In my opinion, having regard to the general decisions on the Act, I should say you cannot. And it is absolutely certain that he is not bound to produce his authority without being asked. In a case which also decided another point, an inspector asked to be supplied with rum, and was refused. He told the publican he was buying for purposes of analysis. The publican, on being prosecuted, said, "The inspector, who was in plain clothes, ought to have produced his authority. He ought to have given me some document to show that he was an inspector." But Mr. Justice Bruce said, "No! The inspector said that he wanted the sample for analysis by the

public analyst. What difference could it make to the publican whether he was an inspector or not, unless he was selling adulterated goods?"

Imagine what would happen if an inspector went to a shop, and, producing his commission, remarked, "I am duly appointed, as you see, to take samples under the Food and Drugs Acts"—how many convictions would there be, think you?

Another question arising in the same case was, **Can the inspector demand to be served from a particular bottle, tin, etc.?** At that time (perhaps it may be the same now) practically all the police of Hampshire above the rank of constable had been duly authorised to take samples of food for test purposes. One fine day there strolled into the bar of the Britannia Inn, Lymington, a fine-looking man, who asked Mrs. Payne, the landlord's wife, for threepenn'orth of rum. Having been served out of a bottle that stood on a shelf behind the bar, he paid his threepence, and tasted the liquor. Apparently he was a connoisseur of rum; for having tasted, he said, "I'll take half a pint of rum, please, ma'am." The landlord had come in by this time; and, hearing the order, he went to a jar, and drew half a pint of the spirit therefrom. "Why can't I have it out of the bottle I was served from before?" demanded the customer. "You'll have it out of this, or not at all," was mine host's reply. Then said the customer, "I am purchasing this rum for analysis by the public analyst under the Food and Drugs Acts. I demand to be served out of the bottle," and he pointed to it. "You'll have it out of this, or not at all," was all the reply he could get; and, after several more demands, Police-Inspector Huck—for the plain clothes covered the form of that martial gentleman—took his leave without any rum. A summons for "refusing to sell" followed.

Payne pleaded that he had been asked for half a pint of rum, and was in the act of serving it when the inspector asked for rum out of a particular bottle. "Now," said Payne, "although I was bound to serve him with half a pint of rum, I was entitled to select the rum I would serve. "It was an ingenious plea—calculated to defeat the Act with a vengeance. But Mr. Justice Bruce would have none of it. That learned judge said that an inspector was absolutely entitled to be served out of the bottle he chose to be served out of, assuming that the contents of the bottle were exposed for sale, as they undoubtedly were. If not, what was to prevent a dishonest tradesman from keeping two kinds of everything—one for sale, and one for analysis?

You may take it as law, therefore, that an inspector has a right to buy any article of food in the shop, and to have it served from the canister, or bottle, or drawer that he selects. Provided always that nowadays he cannot make you break open a packet or tin of an article usually sold by you as a packet or tin (*see* p. 1214).

The interesting part of the Lymington rum case is that if the landlord of the Britannia had kept his head and his temper, and had known ever so little of the law, he could have made Inspector Huck look rather foolish. After having offered the half-pint of rum from the jar, and the inspector refusing to take it, Mr. Payne might have said, "Certainly, you can have it out of the bottle." Then he could have taken pen, ink, and paper, and on a

clean sheet of notepaper could have written in bold type, "*Sold as mixed rum. No alcoholic strength guaranteed.*" This notice he might have handed to the inspector, and had the laugh on his side.

As I have stated before, anybody who likes may purchase a sample for analysis. The difference between inspectors, etc., and other persons is that the former do it at the expense of the local authorities, or of the Government department, while the latter do it at their own expense. There is, however, another **important difference**. If Dick, Tom, or Harry comes to purchase a sample for analysis, he can do nothing if the tradesman refuses to sell. It is only an offence to refuse to sell to an officer, inspector or constable, duly appointed. Suppose, therefore, you are a retail provision merchant, addicted to the sale of butter mixed with milk, and a man from the Butter Association comes in and asks for a pound of it, and you find out that he is from the Butter Association, you can refuse to sell any. Even if he says he wants it for analysis you are safe in refusing to let him have what he wants. Neither, of course, can such a person compel you to give him a sample out of any particular lot of butter.

You ought to keep your eyes and ears open after the purchase is completed to see what the purchaser does.

Let me first of all deal with the **course of procedure where the sample is taken at a shop**, "premises," stores, street, or place of public resort—that is, where the sample is purchased in the ordinary way at the place where it is on sale to the public. The first thing the purchaser must do is to inform the seller (either the owner of the shop, etc., or else the actual salesman), "*I intend to have this analysed by the public analyst.*" He need not say these exact words but he must make a notification to this exact effect. He must say "*public analyst.*" If he says, "Take notice that I am going to have this analysed," it is not enough. It will be enough, though, if he says "county analyst" or "borough analyst."

The next important point, though it seems a small one, is that this notification must be given "**forthwith**" after the sale. There have been disputes before now as to what "forthwith" means. I cannot quite tell you what it means; but I can tell you what has happened in one or two cases where the tradesman has pleaded that the notification was not "forthwith." There was one case where an inspector named Stace, bent on sampling the wares of one Smith, thought it prudent not to go into the shop himself. So he took with him an assistant named Donovan, who was less well known. Donovan walked in. "A pound of shilling butter," he said, and threw down the shilling. Smith weighed out a pound of stuff that looked like butter and handed it to Donovan, who took it and marched straight out of the shop.

But Stace had been on the watch; and when he saw Donovan making for the door on the inside, he made for it on the outside. He arrived just as Donovan had got out of the shop. "Come back with me," the inspector said; and seized the butter. Opening the door again, the pair entered the establishment of the chagrined Smith, who, you may think, looked very blue when Stace said, "I intend to submit this for analysis to the public

analyst." Usual summons. To which Smith objected that the notification of intention had not been given to him "forthwith by the person purchasing." It was soon decided that Stace was the person purchasing, the other being only his servant. So that the only question was whether he had given his notification "forthwith after the purchase was completed." The shopkeeper's idea seemed to be that the notice ought to have been given before Donovan left the shop. But on inquiry it appeared that the whole transaction took place inside of two minutes. And the judges thereupon held that it was quite "forthwith" enough for all practical purposes.

In another case an inspector sent a constable in small, tight-fitting boots and plain clothes to buy a bottle of gin from a public-house, the inspector standing outside. Robert, in disguise, made his purchase without the innkeeper suspecting who he was. Then he went out and rejoined the inspector. Two minutes after the constable was out of the house he entered it again, this time with the inspector; and then the notice was given. The gin was 37 degrees under proof (instead of 35, as allowed by the Act of 1879); and on the analyst certifying to that effect the innkeeper was prosecuted. His defence was, "Notice not 'forthwith.'" But Lord Coleridge and Lord Esher would not have it. They scoffed at the defence.

Now I am not sure how far this gin case is good law. It may be good as regards that particular transaction. I would have you note that the article there was sold in a bottle, corked; and that when the inspector went in, it was easy to see that the bottle had not been tampered with. So perhaps the decision was sound under the circumstances. But beware of "under the circumstances" decisions. They are the worst. There was a case where a Rugby farmer was summoned for delivering to the Birmingham Dairy Company, on the 26th of February, a can of milk containing 37 per cent. of water. Not until March 1st was any notification sent to the farmer that the milk was to be analysed; and the farmer not unnaturally objected that this was not "forthwith."

The judges there said that two days was not "forthwith." Yes, you may say, but there is a vast difference between two minutes and two days. You are right, gentle reader. There is a vast difference in time; but not in principle. I can quite conceive of cases where it would be wrong to say that two minutes was "forthwith." As I understand the law, this section was put in to protect the accused tradesman. As I understand it, the intent of the section was that directly the sale is completed the seller should be informed that the article just sold might form the subject of a criminal charge. He can then see that the sample is not tampered with before it is divided; and can thus protect himself against any inspector or other over-zealous person who does not so much wish to see the law enforced as to get a conviction. There are people like that. A police officer or inspector is often commended and promoted in proportion to the number of convictions he secures. It is his interest to make "captures." If he does not make one now and then, his superiors may begin to ask him what he is doing—how he is spending his time.

And I think it is a very dangerous thing to hold that a purchaser may take the sample out of the shop, away from the eyes of the seller, before making his notification and dividing the sample. Suppose a food and drugs inspector buys a pint of milk from a dairyman, carries it away in a jug, and comes back in two minutes. How is anybody to know that he has not put some water in that jug? I am glad to think that my view of the law was also taken by my old friend Lord Field, who, when he was Mr. Justice Field, said, in the case of *Parsons v. Birmingham Dairy Company*, "I think the intention of the Act is to strike at the moment of time at which the seller parts with the article." If you are ever summoned, and the purchaser has not notified you in due form before leaving your shop, be sure you quote Lord Field's words to the justices. I myself should always be open to contend that his view of the law was the right one.

As I said, the gin case was a little exceptional. There the article was sold in a corked-up bottle; and when the inspector and his deputy went into the public-house at the end of the two minutes, it was obvious that the bottle had never been uncorked. Therefore the intention of the Act was, perhaps, complied with. I think the real test is, Did any time elapse between the sale and the notification, during which the article might have been touched?

Immediately after the notification (which may, by the way, be in writing) the purchaser has to

(1) **Divide the article into three parts.** If he is an official of the Local Government Board or the Board of Agriculture you can tell him easily, because he will divide the sample into *four parts*. Before 1900, the purchaser merely had to *offer* to divide the sample into parts. Now he must do it anyhow.

(2) And he must *do it then and there*—at the place where he notifies the seller of his intention to have the sample analysed.

(3) Then he must *seal or fasten up each part* in such manner as its nature will permit—*e.g.* milk in bottles, corked, with a seal over the cork; and

(4) If he is required to do so, he must *deliver one of the parts to the seller* or his agent. For this purpose, a salesman in a shop would be the agent of the shopkeeper.

One of the parts is to be retained by the purchaser—we shall afterwards see for what purpose—and the third part is the part to be sent to be analysed by the public analyst. When a Government officer is the purchaser, he must send the fourth part (*see above*) to the Board that employs him.

Now all the provisions here are imperative. The slightest flaw will invalidate the whole proceedings; and the retailer is quite at liberty, when he is summoned, and appears in court, to object to the validity of the summons if all these things have not been done.

It should, however, be remembered that under the Margarine Act an officer may take a sample of any substance exposed for sale as butter (unless duly marked "Margarine") without going through the form of purchase at all.

So far for the proceedings in the shop.

There is, however, another way of taking samples, and that is in the

course of delivery. Until 1900 this method was confined to the one article of milk, and was largely used. It was valuable because it enabled the milk inspectors to get at adulterated milk before it reached the retailer, much less the consumer. It could be used, also, in cases where the milk was not on sale by retail in the ordinary way, but was being delivered to the consumer under a big contract; for example, where it was in course of delivery to a school, asylum, or—as in the case set out in Chapter II.—to a workhouse. In such cases the goods are not “on sale or exposed for sale on any premises, shop, store, or in a public street or place of public resort”; so this was the only way of getting a sample for analysis unless the purchaser, as in the case of the *Louth Guardians* (*see* p. 1245), chose to be at the trouble of a private analysis and prosecution.

This mode of dealing with adulteration was found so efficacious in the case of milk that it has been extended to all articles of food. Only there is this difference: Milk can be taken for analysis without the consent of anybody. Other articles of food *can only be taken when the purchaser consents, or requests* that it shall be done. Thus, a wholesale firm is delivering lard at your shop—three or four hundredweight of it; up comes an inspector of nuisances, duly appointed as a food and drugs inspector. He walks in as the wholesale firm's van is being unloaded, and says to you that he would like to take a sample of the lard then and there. You may refuse, or you may consent; just as you please. If I were you I would consent, because otherwise the inspector might suspect something, and have his eye on the lard sold in your shop in a manner anything but pleasant.

There seems to be a slight omission from the 1899 Act as to the way of dealing with samples taken in course of delivery. It is expressly provided that if milk, margarine, or margarine-cheese is taken, part of the sample shall be sealed up and sent by registered parcels post or otherwise to the consigner, if his name is on the can or package from which the sample was taken. But no such provision is made in the case of other articles of food. It seems clear, however, from the cases that have been decided under the old law in reference to milk, that an officer obtaining a sample in course of delivery *need not go through the formalities required when he purchases a sample in a shop, “premises,” etc.*

You see, the case is altogether different. In the case of going into a shop, etc., and buying a sample for analysis, the shopkeeper who is going to be summoned if the article turns out bad is there, or his assistant is. In the case of a sample taken from goods in course of delivery, the wholesale man is generally not there, neither has he anybody to represent him. Take such a case as this: Mr. Hall, a farmer in Coventry, sent milk to a retailer in London, the milk to be delivered at Euston Station. One morning an inspector of food and drugs turned up, and demanded of the porter who was getting the cans out of the railway van a sample of the milk. It was obviously impossible for the inspector to comply with the formalities required in the case of a shopkeeper. He could not “forthwith” give notice to Mr. Hall or his agent selling the milk that he intended to have the milk analysed

by the public analyst ; nor could he give him or his agent a part of the sample to be then and there divided ; for the simple reason that Hall was in Coventry, and did not, of course, send an agent or servant up to London with the cans. Besides, it is possible that Hall's address was not on the cans, and he had to be discovered.

He was found, however, and summoned for selling watered milk, and then he objected that the inspector had not acted as the statute enjoined. There had been no "notification forthwith" ; not any handing over of a part of the sample to the seller or his agent. The inspector had, apparently, only a very hazy idea of his own position ; for he had, in fact, split the sample into three parts, and had offered one part to the railway porter—just as it that person were in the same position as the salesman in a shop. Naturally enough, the porter was not regarded by the Court as Hall's agent ; he was the servant of the railway company, that was all. The prosecution then took up the position that there was no need for the inspector to do as he would have done in a shop, and the Court agreed with them. Mr. Justice Field and his colleague on the bench held that those formalities could not have been intended to be carried out in cases of this kind, because it would be quite impossible to fulfil them once in a thousand times.

The Scottish Courts, in a more recent case, came to the same decision. There Mr. Morton, farmer, of Inchbelly Farm, Kirkintilloch, Stirlingshire, was under contract to deliver eight gallons of sweet milk (in England called "new" milk) to one Robley, of Glasgow, a milk-seller. The place of delivery was to be the tram terminus at Springburn. An inspector of the Glasgow Corporation put in an appearance at the tram terminus one day, and took some of Mr. Morton's milk in course of delivery ; it was found to be adulterated. Here the inspector did not conform to the regulations ordered to be observed in the case of goods exposed for sale or on sale by retail in a shop, premises, etc., or in the street. Morton took it into his head that because there had been no notification, no division of the sample, there was something wrong. But the Justiciary Court soon undeceived him, and he found himself convicted.

Still, it is a good defence in a milk case, or case of sampling butter, margarine, or margarine-cheese, if the inspector has not sent a part of the sample to the seller or consignee—if the name is on the can or package.

Nobody has the right to take a sample in course of delivery except one of the following **persons authorised by the local authority** whose servant he is : medical officer of health, inspector of nuisances, inspector of weights and measures, inspector of a market, police-constable, or officer of the Board of Agriculture or Local Government Board. Perhaps this is the most convenient place for stating that the action of these Government departments is confined to cases affecting the general interests of agriculture or the general interests of consumers.

WHAT HAPPENS AFTER PURCHASE OF THE SAMPLE.

When a sample has been procured by a person who buys merely for test

purposes, whether in course of delivery or otherwise, before he can prosecute for the offence he **must** have the sample, or part of it, analysed. This is absolutely necessary. Suppose an inspector catches you out selling adulterated coffee. He has bought a pound of it; told you he is going to have it analysed by the public analyst, and divided the article into three parts. You then say, "I admit the coffee is adulterated with chicory." Now in an ordinary case that would be quite sufficient to convict you, because it is a confession of guilt. In these adulteration cases, however, it is not enough. The statute is very strict, and one of its strictest regulations is that the article must be analysed by the public analyst (no other analyst will do), and his certificate must be given before any proceedings can be taken.

In this chapter I frequently mention **the public analyst**. Who is he? and how does he come to be there? Well, the public analyst is an analytical chemist appointed by the **local authority** for the purpose of making analyses of foods and drugs. The local authority is the County Council of every county in England, Scotland, and Ireland; the Town Council or City Council of every borough or city in England entitled to hold Quarter Sessions, and having a population of 10,000 by the 1881 census; the Commissioners of Sewers of the City of London, and the Borough Council in a London borough. In Scotland, the commissioners or boards of police for royal burghs or burghs returning or contributing to return a member to Parliament; and if there are no such commissioners or boards, then the Town Council if there is one. In the case of towns not otherwise provided for, the County Council appoints the analyst. The point I want to insist on is this, that the purchaser of a sample must have his sample analysed by the public analyst of the district where the sample was purchased or taken. If there happens not to be one at the time, he can have it analysed by the public analyst of any adjoining district. If the local authorities refuse to appoint a public analyst, the Local Government Board can make them do it, just as, not very long ago, they compelled the unwilling Poor Law Guardians of Leicester to appoint a vaccination officer.

The analyst of the district gives his certificate, then; and, having received it, the purchaser may decide to take proceedings. Until the analyst has given a certificate nothing can be done. If he does so decide, this is what he must do:—

He must go before a Justice of the Peace (in England) and state (not on oath, and not in public) the facts on which he bases his charge. It is not absolutely necessary that this "information" should be in writing; but it usually is. The prosecutor need not do it himself. His counsel or solicitor, or other agent, can do it for him. If the justice thinks the complaint not wholly ridiculous, he must issue a summons. The justice doing this must be in the district where the offence was committed, except where the offence is giving a false warranty (*see* p. 1210). In Ireland "information" is laid in the same way. In Scotland the prosecutor proceeds by "complaint" before the sheriff or sheriff-substitute. Where a sample is purchased for analysis, the offence is committed in the district where the purchase is made. Where a

sample is taken in course of delivery it is committed at the place where the goods are actually delivered to the consignee or purchaser (*i.e.* where the sample is taken).

It is important to notice that **the prosecution must be instituted not later than twenty-eight days** from the time when the article was purchased for test purposes. It was once held in Scotland that the twenty-eight days did not include the day the article was bought. The time limit only applies in case of test purchases—not to other offences, such as false warranties, not having name on milk-can, obstructing an officer in the performance of his duty, and so on. But as these are quite subsidiary matters, I do not propose to trouble much about them now; but ask you to assume that you are to be charged with adulteration or selling an adulterated article of food or drug.

Some day a police-constable will call at your shop; and if you are in, will hand you two documents—one the summons (or its Scottish equivalent) and the other the certificate of the analyst. If you are not to be seen personally, he will leave it at the shop with your wife or your assistant, explaining to such person what the documents are. You come home, have the bit of blue paper pushed in front of you by your tearful wife, or find it where it was left on your desk by your fearful assistant. It will command you to appear at the local justices' (Scotland, sheriff's) court on such a day to answer the charges set out therein. The summons ought to contain, with reasonable fulness, the particulars of the offence you are charged with. For instance, supposing you have sold some lard heavily loaded with water, the summons ought to say so. It ought to tell you, not merely that you are charged with selling lard not of the nature, substance, and quality demanded, it ought to say that the lard sold was adulterated with water. Otherwise you might imagine you had to meet a charge of mixing in it beef-fat (stearine).

But if you should go before the justices with a complaint that the summons did not give you proper details of the accusation made against you, do not imagine they will necessarily let you off. If you really feel aggrieved, *ask for an adjournment*; and the justices (or sheriff) will grant you one if they think you have been unfairly dealt with. You must not forget that a copy of the analyst's certificate accompanies the summons; and from it you will be able to gather what you have to meet.

Now when you receive a summons, you will probably feel annoyed, and will want to know why the police cannot devote their attention to the thieves, and the inspectors of nuisances to bad drains, instead of harrying unhappy tradespeople. But do not waste too much time in denunciation; other work lies before you. You may be in one of several cases:

- (1) You may be guilty, and know it.
- (2) You may be guilty, and not know it.
- (3) You may be not guilty, and not know it.
- (4) You may be not guilty, and know it.

Quod erit demonstrandum.

(1) You are in plight No. 1 if you yourself have milked the butter, or watered the milk, or dusted the pepper, or salted the beer. If you are, I have nothing to say to you, except that you may, if you care to try it, go to the office of the local authority's clerk, and see if you can, by forswearing adulterations for the future, induce him to get the prosecution withdrawn.

(2) You are in plight No. 2 if your wholesale house has sent you adulterated goods, though you ordered and paid for the genuine article. You, trusting the wholesale house, think there must be a mistake. What ought you to do? Well, if you want to find out whether you are guilty, or whether you are in category No. 3, you must be sure to have analysed that part of the sample that was left with you by the inspector when he made the purchase. If I were you, I would **send it to a public analyst**—not, of course, the public analyst of your own district who has given a certificate to the prosecution, but to some other public analyst. For example, if you keep a shop in Birmingham and have a sample taken there, the prosecution will employ the Birmingham City Analyst. You might send your part of the sample to the Wolverhampton Borough Analyst. You can, of course, employ a private analytical chemist if you like; but if you do, his analysis can only be given to the magistrates by himself on oath in the witness box. The certificate of a public analyst, on the other hand, is in itself evidence.

When you see the analyst, public or private, whom you employ, or write to him, tell him the date the summons is to be heard; and let him have a copy of the prosecution's analyst's certificate. Ask him to be as quick as he can. Of course, an analysis cannot be done in a minute, like a conjuring trick. It is a long and elaborate process, varying in length and elaboration with the substance to be analysed. In fact, most analyses, to be thorough, are so elaborate that the odds are they are incorrect. Any chemist knows what I mean. Taken as a rule, it is not difficult to detect the presence of any given ingredient in any given substance. You take milk—it is quite easy to tell whether the milk has been "preserved" by boracic acid or formaldehyde or salicylic acid. You can tell there is some there. **The difficulty is to tell how much.** So in all cases. Unless the analysis is conducted without any slip at all, it is difficult to tell, to an absolute certainty, the precise quantity of solids other than fat in milk, of added beef-fat in lard, and so on.

In many cases this does not matter. It is an offence to add any beef-fat to lard; but it is not always an offence to have a difference of a fraction of solids other than fat in milk—a difference, I mean, from the Government standard. Milk containing too small a proportion of non-fatty solids may be either genuine milk, but poor, or it may be milk watered down. One analyst may be of one opinion, one of another. I remember a case where some acid had been added to milk as a preservative. The borough analyst—a man of great repute and experience—differed from another analyst of equal experience and greater repute, to the extent of twelve grains per gallon. Possibly neither was absolutely correct.

When you get your analyst's certificate, you will know where you are. You will know, at all events, that you are guilty if your own analyst confirms the other. Then you can act accordingly. On the other hand, if your own analyst says, "No adulteration," you can go to the court of the justices or the sheriff with a light heart. But you should send to the prosecutor, at least three clear days before the summons is to be heard, a copy of your analyst's certificate. If, however, you did not get it in time to do this, tell the Court so, and the Court can excuse you. They cannot prevent you from using your analyst's certificate because you did not send it to the other side in time. At the most, they can only adjourn the hearing of the case until some other day, to give the prosecutor a chance to consider the certificate of your analyst; and you, at your own expense, must procure him to come to the court if the prosecution give you notice that they want to question him.

Or you may be in class No. 4, being not guilty and knowing it. You may be charged, for example, with selling lard weighted with added water. And you may have one of two perfect defences. You may have "rendered" that lard yourself from the pig-fat, and been present during the whole process, and be quite sure that no water has been added. In that case, send the part of the sample left with you to a neighbouring public analyst, and get his certificate. Also prove by your own evidence that you made the lard yourself, and added no water or other moisture. That is one perfect defence.

The other is, that you hold in your possession a written warranty from the wholesale merchant from whom you bought the article that it is pure and genuine. Here there is no need to call in the services of another analyst. It does not matter to you how much water there is in the lard—you go scatheless if you do what I now tell you to do.

In order to have the benefit of a written warranty, you, the retailer summoned, should be careful to observe what I am now going to tell you. If not, your warranty is so much waste paper. A summons always contains the name of the purchaser who is prosecuting. You, if you have a written warranty, must

- (1) Send to the purchaser named in the summons a copy of the warranty, and a written notice stating that you intend to rely on it in your defence;
- (2) In the notice give the name and address of the person who gave you the warranty;
- (3) Send to the giver of the warranty a notice that you have been summoned, and that you intend to rely on the warranty for your defence.

The notices—both notices—and the copy warranty must be sent within seven days after the summons was served.

Now these conditions are imperative. There is no way of wriggling out of them. Unless you do exactly what I have told you, and do it within the

time (seven days), you cannot use the warranty as a defence at all. The magistrates may look at it and take it into consideration when considering how much to fine you, but that is all. Provisions (1) and (2) are to enable the prosecution to make inquiries, or to summon the alleged warranter as a witness, because you might be trying to palm off on the justices a fictitious document, or the wholesale man might like to come and prove that the butter you sold mixed with skimmed milk was pure butter when he sent it to you. The other provision (3) is purely in the interest of the wholesale man—to enable him to appear and contradict you, if he can.

The condition as to time is put in so as to prevent you springing the defence suddenly on the prosecutor, so that he has not proper time to make inquiry into the truth of your defence. **And don't leave it until the last minute.** You know the old saw about procrastination as well as I do. Many a time have I seen a good case thrown away purely and simply by the delay in giving a notice. Take time by the forelock. As soon as ever the summons is served on you, take up your pen, and write a letter to the prosecutor after this fashion:—

“To Mr. William Pankey, Inspector of Food and Drugs,
“Municipal Buildings, Dogchester.

“Take notice that on the hearing of the summons taken out by you
“against me under the Sale of Food and Drugs Acts, 1875 to 1899, I
“intend to rely upon a written warranty for my defence, of which warranty
“I send a copy herewith. I received it from Messrs. James & Johns,
“Wholesale Provision Merchants, 725, Blog Road, Cragford, Hants.”

“August 12th, 1902.”

“(Signed) A. E. SQUELCH.”

Keep a copy of this. Make also a copy of the warranty. Do not miss out anything. See that it is an *exact copy*. Even if it is wrongly spelt, put the wrong spelling in. If there are any commas, or other marks of punctuation, put them carefully in. If none, then miss them carefully out. If abbreviations are used like this: “4 cwt. B. but.,” do not alter it to “4 cwt. Best Butter,” but put it down exactly like the original. If the warranty is on a printed billhead, even copy out the printing on the top. In fact, do not give the prosecutor a chance to say that he has not received “a copy.” Stop every earth. Put the copy, warranty, and the notice into the same envelope, and send by hand or by registered post.

You may then write a polite note to James & Johns, after this manner:—

“To Messrs. James & Johns, Wholesale Provision Merchants,
“725, Blog Road, Cragford, Hants.

“Take notice that I have been summoned to appear at the Dogchester
“Police Court on August 28th, 1902, at 10.30 a.m., to answer a charge
“of selling adulterated lard. As this is the lard I bought from you on
“the 5th inst. with a written warranty of genuineness, I shall rely on the
“said warranty for my defence.

“August 12, 1902.”

“(Signed) A. E. SQUELCH.”

If you are wise, and can afford it, you will go to some solicitor of good repute in your neighbourhood, who is in the habit of doing that kind of work, and get him to represent you at the trial. He will conduct your case far better than you could do it yourself. Happy are you if your means allow you to employ counsel. Probably, if you hold a warranty, or have got into trouble through selling a proprietary article, your wholesale dealer or the proprietors of the proprietary article will bear the expense of your defence in their own interest. But supposing you cannot employ legal assistance, let me tell you to do this: Tell the Court your plain story. If you believe yourself not guilty, tell the magistrates why you think so. Ask to be sworn, so that you can give evidence. If you have got a favourable certificate from a public analyst whom you have employed, hand it up to the Bench. If you have given due notice to the prosecutor that you rely on a written warranty, be sure to have the warranty in court with you, and hand it in; at the same time **being very careful** to say, "I sold the lard"—or whatever it was—"in the state in which I received it, and had no reason to think it was not genuine." If you do not say this, or the exact substance of it, your warranty is no good. Be sure to take the warranty itself—not a copy.

The prosecution must open the ball—though I have been giving defendant's case first. Someone first proves that he served the summons and copy of analyst's certificate with it. Then the public analyst's certificate is produced to the Court. It is not necessary for the public analyst to be present, because his certificate is evidence without his swearing to it. But if you want him to be summoned to give evidence—having questions to put to him—tell the Court so. They can adjourn the case and order that officer to come next time. Similarly, if you produce the certificate of another public analyst, it is evidence on which the Bench can act, and if the prosecution want to ask him questions they must take steps to get him there.

Mind, an analyst's certificate is not conclusive—whether he be public analyst or private analyst. It is only some evidence on which the tribunal can act. If the local public analyst's certificate is put in, and you, the defendant, do not put in another to contradict it, or call some evidence to rebut it, the justices must act on it, because it is evidence, and is not contradicted. It is what we call *primâ facie* evidence—just as it is *primâ facie* evidence that a man has had a drink if you see him coming out of a public-house wiping his mouth. But suppose the local analyst's certificate says, "This butter has had 20 per cent. of water added to it," and you put into the witness-box the dairymaid who made the butter, and who swears that she never added any moisture; and you produce the dairyfarmer, who swears that he got the butter from the dairymaid, and brought it to you without adding any moisture to it; and you yourself swear that you never added any moisture to the butter, and that no one else had a chance to since you got it from the farmer, the chances are that the magistrates will believe you and your witnesses, and come to the conclusion that the scientific gentleman has made a blunder somewhere. Even scientific gentlemen do that, now and then. Since I was a boy the distances to the sun and the moon have varied enormously from

time to time—every successive calculation being put forward as absolutely correct.

Now in case the certificates of two analysts conflict, which they may do as to either the result of the analysis or to the effect of the adulteration, the third part of the sample taken by the inspector comes in handy. If you feel quite confident as to the result, and that an independent analyst would confirm you, you can ask the magistrates or sheriff to send the third part of the sample to Somerset House for analysis in the Government Laboratory. At one time they could grant or refuse the request—as they chose. Now they **must send the sample to Somerset House if you request it.** The prosecution has a similar right. They may feel that the case is safe, and ask for the opinion of the Government analyst to be taken on the sample; and if they ask, the magistrates must grant the request. But I have known cases where there has been a conflict of evidence—such a conflict as generally arises when you have “experts” giving evidence on opposite sides. You have a prosecution of some kind greatly resented by the trade—butter trade, bacon trade, milk trade, or whatnot. Wherefore the local traders’ association, or some body of that kind, or perhaps the wholesale people, take the matter up. Let us suppose the question is, whether foreign matter in caper tea would constitute adulteration, or whether it is unavoidably mixed with the caper tea owing to methods of production.

The grocers’ association have taken up the matter, have briefed eminent counsel, and have gone to eminent chemists and doctors. The local authority, hearing of this, have also gone to expense. They have briefed counsel, and engaged the services of eminent analytical chemists to reinforce the local analyst. Then you have this kind of evidence:—

PROSECUTING ANALYSTS: Have examined sample of caper tea submitted to us. We find the tea good except that it contains 3·5 per cent. of extraneous matter—minerals. This matter is not a proper constituent of caper tea.

Cross-examined: Yes; are acquainted with method of production of caper tea. No! certainly not! Most absurd to suggest that 3·5 per cent. of foreign matter could get in in course of production, if production conducted with reasonable care; might have 1 per cent. (*Retire from box with smile of irritating superiority.*)

DEFENDING ANALYSTS: The caper tea contains 3·5 per cent.—or rather less—of foreign matter; are of opinion that you must have considerable foreign matter in caper tea, owing to mode of production. Consider 3·5 per cent. not at all excessive; have known more.

Cross-examined: Absurd to say that you could have so little as 1 per cent. Yes; heard Mr. Dash and Mr. Blank say so. All we can say is that Mr. Dash and Mr. Blank know very little about the production of caper tea. Eh? what! Reasonable care! We say no care, reasonable or unreasonable, could possibly keep foreign matter out of caper tea. (*Retire from box with air of great loftiness.*)

Now I ask any reasonable being, Which of these stories is the Bench to believe? How can the honest squires who form the great body of J.P.s come

to any conclusion on such evidence? Scotland is fortunate enough to have its cases tried from first to last by trained lawyers. But even the trained lawyer sometimes gasps in indecisive amazement at the evidence of the scientific "expert." In such a case (or in any other where they care to do so) the Bench can of its own initiative send up to Somerset House for analysis the third part of the sample—the part that has been retained by the local authority's inspector. This part, duly sealed up, must be produced at the trial for the Bench to deal with if it cares to do so. The sending of the sample to the Government analyst will naturally mean that the case will be adjourned until the Somerset House report is received. It is important to remember that when the Court sends the sample to the Government Laboratory, there are expenses incurred; and the magistrates can order either the prosecution or the defence to pay these expenses. It is, therefore, unwise to ask the justices or sheriff to send the sample to Somerset House unless you strongly challenge the report of the local public analyst, and are fairly sure of your ground.

When, however, the Court has sent the sample up to the Commissioners of Inland Revenue, and the Government analysts have analysed the article and reported, in most cases their certificate concludes the matter. Not always, mind. The Acts nowhere say that such a certificate shall be conclusive. I myself once upset a Somerset House certificate; for I was able to prove up to the very hilt that the article in question had not been adulterated. The case had been carefully prepared. My clients had had this particular commodity sampled and analysed once before, and to their great surprise received a visit from an inspector, who said, "That sample I took the other day turns out to be adulterated"; and he explained how it fell short of the standard. "If it occurs again," he went on, "we shall prosecute you." The tradesman was, as Mrs. Gamp would say, "Struck all of a heap." He knew the article in question was not adulterated; he manufactured it from the raw material himself. He went for advice to his solicitor, and was advised to have a competent person, quite independent of him, present at the next making. The witness was secured. Then the stuff was sold in the ordinary way. As had been expected, a sample was taken, the purchaser being a woman sent by the inspector.

There was a prosecution. The tradesman proved that he made the article himself in presence of the aforesaid witness and without adulteration; the witness corroborated. The tradesman also proved that the article could not have been tampered with without his knowledge between manufacture and sale. He proved that it had not been tampered with, in fact. In face of this evidence the magistrates had their doubts. The prosecution asked for the sample to be sent to Somerset House, and the justices sent it. Curiously enough, Somerset House backed up the local public analyst—said the article was adulterated. The Bench was then disposed to think my man a perjured liar. I urged against this that he was a man of good character—that he must be a great villain if he were guilty, because he must be setting up a defence not only false, but wilfully false and fraudulent. I further pointed out that whereas he and his witnesses swore to matters of absolute fact, within their

own knowledge, the analysts were only giving opinions. The man got off, and, unfortunately, there was no appeal.

I am not at all sure how far the Somerset House certificates ought, in law, to be admitted as evidence, except as to the actual percentages of the analysis; for the certificate is to be "of the result of the analysis." But these certificates often go much beyond this. They not only give the result of the analysis, but in the form of "remarks" at the end of the certificate the Government analyst will add a little article, expressing his views on the question of food adulteration. Personally, I think nothing more than the "result of the analysis" ought to be in the certificate. The Scotch Court of Justiciary, in the year 1884, would not admit as evidence a statement by the Somerset House chemists that a Scotch cow's milk ought to contain a particular percentage of fat. I think they were right. But at the same time I know that in England these opinions of the Government analysts are always welcomed by the magistrates, and are almost invariably acted upon. They are regarded as impartial, you see, and therefore trustworthy.

The public analyst's certificate ought to be in proper form—of which a sample, or skeleton, has been laid down by statute. This is the sample:—

"To (*the person submitting the sample to analysis*),

"I, the undersigned, public analyst for the (*city of Manchester*), do hereby certify that I received on the (*10th*) day of (*April*), 19(*02*), from (*John Jones*) a sample of (*milk*) for analysis [which then weighed twelve "ounces*], and have analysed the same, and declare the result of my analysis to be as follows:

"I am of opinion that the same is a sample of genuine (*milk*),"

OR

"I am of opinion that the said sample contained the parts as under:
"(*Fatty solids, 3·5 per cent.: other solids, 5 per cent.: water 91·5 per cent.*),"

OR

"I am of opinion that the said sample contained the percentages of foreign ingredients as under:

"(*Boracic acid 50 grains to the gallon*)."

At the foot of this document the analyst may insert observations. He *must* say whether, in case the article is liable to decomposition, any change has taken place that would interfere with the analysis. He *may* say, if he likes, whether the mixture or abstraction was for the purpose of rendering the article fit to be carried, or more palatable, or was unavoidable, or injurious to health, or in greater quantity than usual.

One would think that, having regard to the plain form given by the Act, no analyst could go **wrong in the form of his certificate**. One would be mistaken. Every day cases crop up. In two of the "arsenic in beer" prosecutions in 1901, the High Court held that the analysts had not

* Leave out the part in square brackets where article not easily weighed.

given proper certificates. In neither case did the analyst say how much arsenic there was in the beer. If you look at the alternatives in the above form of certificate, you will see that the only case in which he need not give the quantities is where he finds the article genuine. In other cases he must either state exactly what he does find—that is, set out in full the result of the analysis; or, if the only complaint is that foreign ingredients are there, he must state how much of the foreign ingredients the sample contained.

There have been two cases decided on this point. In one (a milk case) the analyst's certificate was as follows:—

“I am of opinion that the said sample contained the percentage of
“foreign ingredients as under:

“5 per cent. of added water to the prejudice of the purchaser.”

The Court of Queen's Bench said this was not enough. Water was not a “foreign” ingredient of milk. The certificate was a mere opinion without any facts in it. Where the thing said to be added was one of the constituents of the genuine article, the analyst must state the facts on which he bases his opinion that the thing was added. He need not give a full analysis of the sample, necessarily. For example, in another case the analyst's certificate was as follows:—

“I am of opinion that the sample contains the parts as under:

“Milk 94 per cent., added water 6 per cent.

This opinion is based on the fact that the sample contained 7·97
“solids not fat, whereas genuine milk contains not less than 8·5 solids
“not fat.”

This certificate was adjudged to be good, because the analyst had given the facts on which he based his opinion. So that if you get a certificate served on you with the summons, and the certificate gives no facts, but states the analyst's opinion that so much per cent. of something has been added, you may be able to object to it or you may not. It all depends on the fact whether the so-called added ingredient is an ingredient of the article in its pure state. For instance, in a pure state there is water in lard. Therefore a certificate simply saying, “In my opinion the sample contains 3 per cent. of added moisture,” will be a bad certificate. But if it says, “In my opinion the sample contains 3 per cent. of beef-fat, which is not a constituent of lard,” the certificate is a good one, because beef-fat is a foreign ingredient.

The analyst is not quite infallible or despotic, though he may think he is. He does think so in some parts of the country, I find. It is not his business to decide whether an article is adulterated, so as to constitute an offence. His duty is to tell the tribunal, as a scientific man, what he finds by his analytical examination of the article. He can add anything he likes, almost, to that. And the tribunal can, on its part, take what notice it likes of the addition.

It is, I wish to observe, a most important thing to notice whether a certificate is good or bad ; for if it is a **bad certificate, the prosecution fails**. The reason is, that a bad certificate is no certificate at all ; and as there can be no prosecution without a certificate, it follows that there can be no prosecution with a bad certificate. The law, in effect, says, *after* the public analyst has certified, the prosecutor may begin court proceedings. If the public analyst has not certified then, the court proceedings cannot be begun ; and if they have been begun they are all out of order—null, void, and of no effect.

A private purchaser may prosecute ;

and if he prosecutes he **need not go through the formalities** prescribed in the case of a purchaser who purchases purely for purposes of analysis. Suppose, that is, you, being a grocer, deliver to a customer who orders "butter" a substance that is really margarine. The customer is a *bonâ-fide* customer who wanted butter for consumption ; but, being suspicious that you have not sold him butter, but a mixture of butter and cocoa-fat, he takes the trouble to have the substance analysed. He need not do this if he can prove the admixture in any other way ; but he will have great difficulty in such proof.

Now, as I have said, a person buying for purposes of analysis must do certain things required by section 14 of the Food and Drugs Act, 1875. The public prosecutor must forthwith notify the seller of his intention to have the article analysed. The private prosecutor need not notify at all. The public prosecutor must divide the sample into three parts, and offer one part to the seller or the seller's agent (*e.g.* the shopman). The private prosecutor need not, because he did not buy a sample, he ordered something to eat or drink. It would be absurd if I bought a bottle of wine for my own consumption, and, having reason to believe it to be adulterated, had to divide it into three parts and send one to the seller.

Moreover, a person buying for purposes of analysis must "lay the information"—that is, complain to the magistrate or sheriff—and apply for a summons within 28 days after the article was bought (*see* p. 1235). A private purchaser who did not buy on purpose to have the article analysed can begin proceedings at any time he pleases.

When I use the terms "private" and "public," I am drawing a distinction between the real *bonâ-fide* purchaser and the man who, whether a public officer or a private individual, buys food with the intention of having it analysed and not really to eat or drink or use as a medicine. There are certain trade associations which try to enforce the law relating to adulteration in respect of particular commodities. The Butter Association is one of these bodies. It concerns itself with the adulteration of butter ; and sends out agents in various parts of the United Kingdom for the express purpose of catching those who sell adulterated butter. They cannot, apparently, trust the local authorities to execute the law. It was this Association who undertook the prosecution of Pearce's Refreshment Rooms (*see*

MARGARINE). And you may take it from me that when you see a big butter adulteration prosecution, the Butter Association has a finger in the pie. Now the agents of the Butter Association, though private persons, when they go in and buy a pound or two of butter are on the same footing as medical officers of health, nuisance inspectors, police constables, and other public officers; because they, like these, do not buy for their own consumption, but "with the intention of submitting the same to analysis."

The idea, or principle, of the distinction seems to be that if I go round on purpose to try and catch a man out in a breach of the adulteration laws, I should announce myself as soon as I have bought my sample. This is to give the accused a fair chance. But if I am a private person, and do not seek out the adulterator, but have him forcing his delusive wares on me, and afterwards I discover the fraud, there is no reason why I should not prosecute as well as for any other offence.

It was thought at first, after the 1875 Act was passed, that all persons prosecuting must have gone through the formalities necessary to be gone through by the public prosecutor. And so it was said by an English judge in a Birmingham case. But in an Irish case, the Irish judges disagreed with this view, and drew the distinction mentioned above between purchases for *bona-fide* consumption and purchases for test purposes. The Irish judgment shook the confidence of English lawyers in the pronouncement in the Birmingham case—it had never been a very firmly rooted confidence, by the way—and the next English case on the point was awaited with interest by lawyers.

The matter was tested, and finally settled in a case argued in London before three judges of the High Court, presided over by the late Lord Russell of Killowen. It was in this way: One Buckler, a grocer at Louth, in Lincolnshire, had contracted to supply, at a price, to the Louth Guardians, for use in their workhouse, a quantity of "good fresh butter, English." This was to be delivered from time to time. One Saturday, Buckler delivered, as butter, thirty-nine pounds of something that looked like butter. But perhaps he thought real fresh butter, English, too good for a workhouse. Anyhow, he delivered an article consisting of 75 per cent. of butter and 25 per cent. of other fat or margarine. Now, under the Margarine Act, this was margarine; and he was bound to wrap it up in a paper wrapper with "Margarine" printed on in big letters. This he failed to do; doubtless for the excellent reason that the Louth Guardians would very promptly have sent it back with a letter stating, "We ordered butter, not margarine."

Unfortunately for the grocer, the visiting house committee of the workhouse held a meeting about that time. Possibly they had their suspicions. At all events, they seem to have been a vigilant body, resolved that the rate-payers' money should only be spent for full value. So they cut off about one pound of the "butter," divided it into three parts, and sent one part to Mr. Otto Hehner, the analyst, and another to Buckler by the hand of the master of the workhouse, together with a note calculated to make the grocer lose some sleep:—

December 10th, 1894.

"At a meeting of the house committee of the Louth Union this morning, the butter supplied by you was examined, and a pound of it cut into three parts; one of such parts will be sent to an analyst, one kept by the Guardians, and the third I am instructed to bring to you."

"I am, Sir,

"Most respectfully yours,

"JOHN T. CROWSON,

"Master."

The analyst certified 25 per cent. of adulteration; and then the Guardians ordered their clerk to prosecute. This he did by taking out a summons against Buckler for selling margarine without a wrapper. He might have taken out a summons for supplying an article not of the nature, substance, and quality demanded; but the other was, perhaps, the simpler plan.

I have told you what the Guardians did. You see, they did not *forthwith* notify to the seller or his agent selling the goods that they intended to have the butter analysed by the *public* analyst. Nor did they then and there (*i.e.* immediately on receipt of the butter) divide the same (*i.e.* the whole thirty-nine pounds) into three parts; nor mark and seal and fasten up the three parts. In fact, the only thing they had done as required by the 14th section of the Food and Drugs Act, 1875, was to send a part of the sample cut off to the seller.

And Buckler accordingly set up in his defence that section 14 had not been complied with. He had other defences; but that was the main one—the real point of the defence. The case being an important one, when it was appealed the Lord Chief Justice was not content to have the assistance of one other judge, but summoned two others to form the Court with himself.

This is what they decided. They decided that a private purchaser (one who does not buy for the purpose of analysis) need not do those things that an official who purchases purely for analysis must do. He need not say, "I intend to have this analysed by the *public* analyst." He need not say, "I intend to have it analysed." He need not give the seller any notice at all that he intends to take proceedings. He need not have it analysed by the public analyst, nor by any other analyst. He has the *right* to have it analysed by the public analyst on payment of a fixed fee of 10s. 6d. **All he need do is, prove by any legal evidence that an offence has been committed,** just as in any other case.

For example, I have shown in a previous place that if a person buys with the intention of having the article analysed, he must have it analysed by the public analyst, although the person who sold it confessed the adulteration (*see* p. 1234). Now suppose Buckler had gone to the clerk to the Louth Guardians, and had said, "I admit the butter was adulterated, and throw myself on the mercy of the Guardians," there would have been no need for any analysis of the butter at all. Or if a purchaser, buying for his own consumption a pint of milk, is supplied out of a churn into which he had seen

the milkman pouring water a few minutes before, that will be evidence of adulteration on which magistrates may convict without the evidence of an analyst's certificate. In Buckler's case, the magistrates held the adulteration proved. And the Court of Queen's Bench, having heard the case argued in the manner stated, decided that Buckler had no legal defence, and must submit to be fined. The interpretation of this part of the Act is thus the same now in both the islands that make up the United Kingdom.

Let me assume that you are convicted, whether you deserve it or not. The next thing that concerns you is how much you have to pay, or how otherwise you are to suffer. It goes without saying that you may have to pay the **costs and expenses of the prosecution**; but that will probably not be the worst of it. The worst of it will probably be the

PAINS AND PENALTIES.

The usual punishment under the Food and Drugs Acts and the Margarine Act is a fine, varying in amount according to the gravity of the offence and the number of times the defendant has been convicted. There is no limit to the smallness of the fine, but there is a limit to the magnitude of it. Except in a few exceptional cases that I will deal with, all offences can be dealt with as follows:—

First offence: Fine up to £20.

Second offence: Fine up to £50.

All offences after the second: Fine up to £100; or, if the justices think a fine is no good, and does not meet the gravity of the offence, they can cause the offender to be imprisoned for six months (or less, but not more), with or without hard labour.

There are certain **exceptions**, as I have said, and these I will proceed to give in detail.

(a) Where you are convicted of mixing or selling an article of **food mixed with something injurious to health**, or a drug mixed with something so as injuriously to affect its quality or potency. These are regarded as very serious matters. You are allowed certain defences not allowed in most other cases, and it is very rare for a conviction to take place. But if you are convicted, you are in a bad way. You may for the

First offence be fined £50; and for

Any subsequent offence be tried for a misdemeanour (Scotland, "crime or offence")—in fact, you may be treated just like any ordinary pickpocket or other criminal; and, being tried, you may be sent to prison for six months, with or without hard labour. Note, please, that except for the first offence of this character you *cannot* get off with a fine.

For **forging or uttering a forged warranty** you are liable to be treated as an ordinary criminal, tried at Sessions, Assizes or Circuit Court, and sentenced to imprisonment for not more than two years, with or without hard labour.

For not having your **name and address on milk-cart** or **can** the punishment is much lighter, being only a £2 fine.

And for refusing to let an officer take a sample of goods in course of delivery, the fine is £10 a time.

Selling or exposing or offering for sale **condensed, skimmed, or separated milk** in tins, etc., not duly labelled "machine-skimmed" or "skimmed," entails the payment of £10 also; while if a **margarine manufacturer** does not keep a proper register (MARGARINE), he may be fined £10 for the first offence, and £50 for any offence subsequent to the first.

Suppose you have been convicted, to the ruin of your reputation and business, I take it that if you still believe yourself not guilty according to the law and the facts, you will want to try to have the mistake rectified, which leads me to tell you about

APPEALS AGAINST CONVICTIONS.

There are two ways in which the magistrate or sheriff may go wrong. He may decide wrongly on the facts, or he may be wrong in point of law. To take an example: A person is prosecuted for selling coffee not of the nature, substance, and quality demanded. The coffee is proved to be mixed with chicory. There was no label on the packet, but there was a notice hanging in the shop to the effect that all coffee sold there was mixed with chicory. The magistrate may decide that even if there was such a notice hanging up, and even if the purchaser saw it, it is no defence. In this case he will be wrong in law (*see* pp. 1206-7), or he may hold that merely because the notice was up there is a good defence—never mind whether the purchaser saw it or not. Here again he will be wrong in law. Or he may decide that the purchaser did not see the notice—which is a question of fact, and the defendant may think the decision is wrong, because he may have said to the purchaser, "You see the notice up there," pointing to it.

Now a man convicted under these Acts is not without a remedy. Whether the decision is wrong in law or in fact, he can appeal to a higher Court. If it is a question of fact, he should appeal (in England) to the next Quarter Sessions. In Scotland he appeals to the Justiciary Court. In Ireland he appeals to the Recorder if he was convicted in a corporate or borough town, or in Dublin, and to Quarter Sessions if in a county. In Scotland an appeal on a point of law must also be made to the High Court of Justiciary. In England and Ireland you may appeal to the Quarter Sessions or Recorder on a point of law, or you may appeal to the High Court direct. The best way is to ask the convicting justices to "state a case" for the opinion of the Court. I am not going fully into this matter of appeals, because anyone who intends to appeal ought to employ legal assistance. Still, it may be useful to know that you can appeal, so I tell you.

The defendant has one advantage. If he is acquitted on a question of fact, the prosecution cannot appeal, though if he were convicted he could. On a point of law, however, either side can go to a higher Court.

CHAPTER II.

FOOD SPECIALLY LEGISLATED FOR.

Section i. : BUTTER, CHEESE, MARGARINE, MARGARINE-CHEESE.

Section ii. : MILK.

Section iii. : TEA AND COFFEE.

Section iv. : BREAD.

SECTION I.

BUTTER, CHEESE, MARGARINE, AND MARGARINE-CHEESE.

Substitutes for butter—What is butter?—Made from milk or cream—What is cheese?—All imitations of butter to be called margarine—Must be labelled when exposed for sale—Must be wrapped in paper labelled "Margarine"—Must outside wrapper be marked?—How margarine may be advertised—Meaning of "exposed for sale"—In view of customers—Dealers in margarine—Importers—Liability of importers—Packages imported to be conspicuously marked—Consignment note—Samples taken in transit—Factories to be registered—Wholesale dealer to register consignments—How packages to be marked—**PROCEDURE**—Taking of a sample—Margarine labelled to be purchased—Butter not—Application to cheese—**DEFENCE** of warranty or *invoice*—How to raise the defence—Notices to be given—To be given in time—When your shopman is at fault—Penalties—Acts do not apply to keepers of refreshment rooms—Pearce's case—Why the Acts do not apply.

Sub-section i.

THE RETAILER.

IN our time the skill of the chemist has extended to most things, and in nothing, perhaps, more than to the imitation by cheap substitutes of well-known but expensive articles of food. Butter, it is well known, has been imitated for many years by the addition of colouring and other matter to grease and fats of various sorts. I believe the industry started in America, where great herds of cattle are made into tinned beef. All the fat of the beasts cannot be used in the canning process, and has to be poured off. And it occurred to some genius to doctor up this fat to the colour and consistency of butter, to flavour it to the taste of butter as near as possible, and then to sell it as the genuine product of the dairy—need one say, at a handsome profit?

Another genius took up the tale. He found out a way of utilising the fat of the pig. Yet another discovered means to doctor up any sort or kind of fat or grease or oil into a good semblance of the genuine article. And so for years people, poor people—of course, they always fall the victims to these frauds—in England bought, paid for, and consumed butter that had never seen a churn—very often had never even seen a cow.

Of course, there is no reason in the world why people should not eat

dripping. I have eaten it myself, and liked it ; in fact, I should at any time prefer good beef dripping to some butter I have eaten—butter, mind you, genuinely made from cream. But what I object to is to pay for butter and to receive coloured dripping—more especially if that dripping be extracted from the carcase of a pig.

Be it understood that unwholesome margarine or other butter-substitute could be dealt with under the Adulteration of Food Acts. But I do not propose to deal in this section with unwholesome stuff, because I shall treat of it when I come to those Acts. I shall only deal in this place with the special laws applicable to those who try to palm off on the innocent and ignorant public “butter” and “cheese” which are not what they pretend to be and ought to be.

What is butter within the meaning of the Act?

The definition as given by Parliament (Margarine Act, 1887) is not precise enough to satisfy a logician or a precisian, but it is near enough for a bench of magistrates. To begin with, it is “the substance usually known as butter”—as one should say, “A horse is an animal usually known as a horse.” Now on this part of the definition it would have been easy for a seller of one of the butter imitations to say, “My substance is usually called butter. I always call it butter to delude my customers into the belief that it is butter ; and they always call it butter because that is what they think it to be.”

Softly ! That will not save you ; for the Act goes on to say that this substance shall be “*made exclusively from milk or cream*,” or both. You can, of course, put in salt as a preservative, or any other preservative, or any colouring matter—provided always, as lawyers say, that neither preservative nor colouring matter is injurious to the health of people taking the butter-substitute.

Cheese within the meaning of the Act is defined in like manner. It is the substance usually known as cheese, but it must not contain any fat except fat that is derived from milk.

It is, perhaps, unnecessary to add that the “milk” alluded to in the statutes need not be cow's milk. You may have genuine cheese made from the milk of the goat, the ass, or the mare.

I had better say, for your further information, that imitations of butter have an Act of Parliament all to themselves (Margarine Act, 1887). Imitations of cheese are dealt with by certain sections of the Food and Drugs Act ; a statute that makes, also, certain additions to the law as promulgated in the Margarine Act. The way Parliament did it was by enacting that the Margarine Act should apply to margarine-cheese, and that when dealing with cheese you are to read the Margarine Act as having the word “cheese” and “margarine-cheese” in it instead of “butter” and “margarine.”

If there is a much more foolish piece of “legislation by reference” than this, I do not know it. This kind of patchwork is a favourite amusement of Parliament, and the law will never be clear (the statute law, I mean) until a more scientific style of legislation is adopted. In this case, for instance, instead of amending the law relating to margarine by passing a section or two extra

in the Food and Drugs Act, and saying, "These clauses shall be read into the Margarine Act, 1887," it would have been much simpler and therefore much better to enact a new and amended Margarine Act. What I deprecate so strongly is that out of sheer laziness on the part of Parliament we have to hunt for the law on one small subject in ever so many statutes. It is as though a factory owner, having made a set of rules, which he afterwards added to, should exhibit the original rules on a board at the entrance to his factory, and the additions on boards hung about rooms on different storeys.

To return to our subject. Anyone selling any substance prepared in imitation of butter **must call it margarine**. It is unlawful to sell it under any other name. You must not call it "butterine," as some people used to do. Doubtless by any other name it would smell as sweet and taste much the same. But the law is plain and clear: you must call it margarine.

It might have been easy enough to evade the law on this point, but for the fact that the Margarine Act contains a very stringent clause to which I am about to call your attention. For instance: Blank is a provision merchant. He has in his shop a pile of buttery-looking stuff bearing the legend, "Fresh. Our price, 11 pence." Enters the shop a woman, who, pointing to the grease, says, "Half a pound, please." The half-pound is duly weighed and handed to the customer, who departs. Now, you observe, nothing has been said on either side to indicate what the article sold is. Doubtless, the woman who bought, seeing the legend "Fresh," thought she was buying fresh butter. But if the shopkeeper should be prosecuted under the Adulteration Acts for selling something "not of the nature or quality of the article demanded," he has a clear defence. He says: "No particular article was demanded; that is, nothing was asked for by name. The woman did not ask for butter; she merely pointed to a pile of stuff, and asked for half a pound." That would be a perfectly sound case on the shopkeeper's part. Not even Mr. Justice Shallow could convict him.

And that is why the Margarine Acts legislate specially on the point—because the general law of adulteration was found insufficient to deal with the matter. I will not say that there may not have been in the legislative mind some other suspicion of a motive. The farmer and the dairyman had been calling out with a loud voice. Said they: "We cannot get proper prices for real butter because so many shams are on the market. People will not pay a remunerative price—say 1s. 4d. a pound for 'Best Fresh,' when they can get 'best fresh' at a fraudulent grocer's for a shilling the pound." There may have been, then, a thought of protection for the British farmer when the Margarine Acts were placed on the statute roll.

One asks how the Act deals with the case of the butterman who simply labels his wares "First Quality," "Our Champion Tenpenny," "Fresh and Sweet, 1s. 1d.," and so on—carefully omitting the substantive part of the description; for "Champion Tenpenny" may be butter or pig's fat, "Fresh and Sweet" might describe coloured dripping equally with the best produce of the Aylesbury dairies.

Wherefore a section (6) of the Margarine Act, 1887, as amended by a

sub-section (s. 6, sub-s. 2) of the Food and Drugs Act, 1899, enacts that in no case shall margarine be **exposed for sale** without being described as margarine. "Fresh and Sweet" will not do, if the substance so described is not butter. If it is margarine, **the word "Margarine" must be displayed** on the parcel exposed for sale. And this word "Margarine" must not be displayed in the style I have seen goods marked in some windows. You all know the dodge. "This piece 1/11"—the 1/11 in bold black print and the $\frac{3}{4}$ in very small and faint lead-pencil writing. The shopkeeper must have the word "Margarine" displayed so as to be clearly visible to the purchaser, and *printed in capital letters not less than one and a half inches square.*

I am not accustomed to visit the shops of provision dealers; but I was in one the other day in a country town, and I saw how the shopkeeper was trying to comply with the Margarine Acts. He had his margarine displayed for sale on thick, white round slabs or platters, and on every platter he had boldly printed in square block letters,

"MARGARINE."

On inquiring I found that the gentleman had, in the early days of the Margarine law, been convicted and fined. The object of writing this is to prevent any of my readers from having a like experience. But in my view this was not a safe way of complying with the statute. When the law says "a label," it is safest to have a label; a metal one will do. Stick this in the pile of margarine, and you are safe.

It is not sufficient for the shopkeeper to label his margarine in the lump as it stands exposed for sale; he must label every ounce that he sells.

Please be very careful on this point, because the law is not now what it used to be. It would not, perhaps, strike the uninitiated that much knowledge went to the selling of a pound of margarine. All the same, the process is not of the simplest. Perhaps I ought not to say that the selling is a work of art; it is the wrapping up, rather.

I am supposing you to be a provision merchant, for the moment. Somebody comes into your shop and buys a pound (or some other quantity) of the margarine displayed for sale there. You must wrap it up in **a paper wrapper with the word "Margarine" printed thereon in letters not less than half an inch long.** And when you order your wrappers, you must be sure to see that they have on them the word "Margarine," and nothing else whatever. Further, you must tell your printer to use capital block letters, and no others; for should the lettering not be distinctly readable, or should the type be other than that described, or should the paper contain any other printed matter whatever, you commit an offence, and you are liable to be summoned and fined. You must not even have your own name and address on the wrapper, so strict is the Act.

It used to be sufficient to deliver *with* the margarine a wrapper containing the mystic word. It used also to be sufficient if the word appeared there somewhere, and was of the right size. Thus, in one case a man wrapped the goods up in a paper covered with advertising matter; and on the paper,

mixed up with the rest, were the words "Kylø's Creamery Margarine"; that man got off. In another case a wrapper was given with the packet, but not round the margarine; the seller got off there, also. But these things will not do now. Study carefully the preceding paragraph and you cannot sin through ignorance.

All that I have written about margarine, as to labels and wrappers, *applies to margarine-cheese* also.

The statute makes the use of a paper wrapper compulsory. Now the question comes in, **What wrapper?** Or, to put it another way, Which wrapper is meant, the **inner or the outer** wrapper? For very many butter-men, on selling butter or margarine, wrap it up first in a piece of transparent glazed paper and afterwards in a piece of ordinary white. As a rule, I believe, it is the inner wrapper, the glazed paper, that is marked "Margarine" in the statutory fashion, and not the outer wrapper.

The question was raised, a few years ago, whether or not this was a compliance with the Act of Parliament. Some local authorities contended that as the wrapper, marked so conspicuously, was evidently intended to be a sort of warning to the customer, to prevent him (or usually her) from accepting ignorantly other grease in place of butter, the outer wrapper should be the one marked. "What is the good," said they, "of handing to a woman a parcel containing a warning, when she does not see the warning until after she has left the shop?" So the matter was thrashed out in a case brought against the World's Tea Company. There the Court held that as the statute only said, "deliver the same to the purchaser in a paper wrapper," on which shall be printed in capital letters "Margarine," it was enough if the marked paper was round the article at all.

But I should like to **warn** my shopkeeping readers. In the face of the decision in this case, no police magistrate or J.P. would convict a dealer in margarine whose inner wrapper was properly marked. But the Court of King's Bench will one day, I doubt not, be asked to review the decision in the World's Tea Company case; and I should not be surprised if the Court upset the decision in that case. I will tell you why. Very soon after the World's Tea Company had succeeded in running the gauntlet, the case of *Toler v. Bischoff* arose. Mr. Toler was an inspector under the Food and Drugs Act. The defendant, Edith Bischoff, was manageress for Pellerin, a provision merchant (retail). The inspector went into Pellerin's shop one day, and asked for "Two pounds of Le Dansk." Miss Bischoff took from a cupboard in the shop two cardboard boxes, each containing one pound, and wrapped them up in brown paper to make one parcel. It was said by one side and denied by the other that the inspector asked for the parcel to be wrapped in brown paper. Wherever the truth may have been on that point, I know not. Suffice it to say that the brown paper was there, and that it was not marked "Margarine" in big letters.

There was, however, the word "Margarine" printed on each of the cardboard boxes. Also, round each box was a paper band, and gummed to the band was a paper, folded up. This paper, which was called in the case a

"wrapper" (why, I know not, for nothing was wrapped in it), had on it the word "Margarine." Again, the same word was printed across the cardboard box, so that part was on the box and part on the paper band. Miss Bishop, the defendant, was charged with a breach of the law for not delivering the goods to the purchaser "in (or with) a paper wrapper" on which was printed the word "Margarine." The Court held, however, that the box, the paper band round it, and the "wrapper," taken together, were a sufficient "paper wrapper" to satisfy the Act. Since the words "or with" were taken out of the Act, probably this would not be held good.

But the case is further important because of an opinion expressed by the late Mr. Justice Cave—as sound a lawyer as ever sat on the bench. "The external wrapper is the one the Act intended to deal with," said he. "Whatever is the external wrapper should be marked." You see, this is opposed to the view previously taken by another judge. But it may be the correct view. Provision dealers at all events, have no call to try to decide between two such eminent authorities as Mr. Justice Cave and Mr. Justice Wright. I should not like to decide between them. And it will, therefore, be the safest plan to **have your outer wrapper marked**. At least, that is what I should do. Because though it *might* be safe to trust to the inner wrapper, the outer wrapper is *certain* to be safe.

Do you know the story of the gentleman who wished to engage a coachman? There were many applicants, and to all of them he put this question, "If you were driving me along a road overhanging a precipice, how near to the edge could you go without falling over?" One said a foot; another, six inches; yet another got down to an eighth of an inch. At last a blunt countryman appeared. The question was put to him also. "Near!" said he, "I'd take a jolly good look-out I never went near at all. If you want a man to risk his neck, I'm not your man." "On the contrary," the gentleman replied, "you are my man. I want someone who will keep me out of danger." I will not point the moral of this improving story.

It should be said that it is **no offence to advertise margarine under another name**. It is one thing to offer for sale, and another thing to offer to sell. An actual case will, perhaps, best illustrate this. A shopkeeper issued a handbill couched in the usual extravagant terms of laudation of his goods, thus: "One pound given away with each two pounds of delicious Kylo's Creamery in one pound fresh rolls, equal in every way to choicest dairy butter, at eightpence per pound." On this, the justices convicted the shopkeeper of offering for sale margarine under another name; but the High Court upset the decision, and held that the handbill was not "offering for sale." You might as well say that when I put up a bill advertising that on such a day my house will be sold by auction, that the bill is offering for sale. Clearly it is not so. When the auctioneer mounts the rostrum and invites bids, then there is an offering for sale—not before. Wherefore you are quite at liberty to advertise your margarine as "Marvellous Creamery," or "Milkery," or what you will, so long as, in the shop itself, you label it by its proper name and deliver it in a marked wrapper.

I do not say the public—the most ignorant section of the public—may not be deceived. They may be. All I say is, the advertisement does not come within the Act. I fancy I hear my friend Cynicus ejaculate, “Deceived, forsooth! I wonder who imagines she can buy butter for eightpence a pound? And who ever believes an advertising handbill?” Not you, my friend, that is evident. Nor I. We regard a tradesman’s advertisement not as a statement of the gospel truth as to his wares, but merely as a sort of sign-post, directing us to his shop. When we see an advertisement of soap, headed “Wash-day a pleasure,” we do not take it for truth. We know it to be a playful way of Mr. Sopeboyler to draw our attention to his soap, which he claims to be peculiarly adapted for the washing of dirty clothes.

The money-making trader of to-day is a glorified cheap-jack. He does not employ a trumpeter, hire a booth and a van, and go round the country and try to sell his wares by lung-power and tongue-power. Not at all. But he employs an artist who draws him or paints him a picture. He employs a man apt in the invention of catch-phrases. And he plasters the walls with pictures and print. The principle is the same. When a cheap-jack is in the market place of a country town you cannot help being aware of his presence, from the noise he makes. And when a man invents a new soap or a new pill, you cannot help knowing the fact, unless you are blind.

Yet, though you and I, friend Cynicus, can appreciate the true value of these things, it is a fact that many a country yokel believes the cheap-jack when that worthy assures the crowd that he is not selling for profit, but is parting with his stuff in pursuance of a wager, and at a great loss to himself on every article. Also there be many who will believe that Beagle’s Syrup will cure every disease, and that Pilule’s Ointment is (though sold for sixpence) worth a guinea a box.

You will see that the paragraphs relating to the marking or labelling of the bulk of margarine (*i.e.* not the actual portion cut off and sold to the customer) apply to margarine **exposed for sale**. So that if an inspector under the Food and Drugs Acts comes into your shop and finds there a lump of margarine not properly labelled, it will not be necessary for him to prove that he saw you offer some of it for sale to a customer, still less that you actually sold any. “Exposed for sale” means, in effect, exposed to the view of customers.

For instance, if you have margarine stored in a back room, or a cellar, you are not bound to have it labelled. Even if you turn out a keg of it and bring it into the shop, and keep it behind a screen in such a position that no person who comes into the shop can see the heap, you are not bound to label that heap. This was decided so long ago as 1890, in a case where an inspector went into a shop and was served with margarine at his request. The wrapper was a proper one; but the margarine was cut off a heap that was kept behind a wooden screen on the shop counter. It was impossible for the inspector, or anyone else, to see the bulk, unless he were behind the counter. The Court of Queen’s Bench decided that the heap was not “exposed for sale,” because it was not visible to purchasers. It might as well,

for all the "exposure" there was, have been in a cellar. So Mr. Lawrence, the provision merchant in question, escaped.

Not so, however, Mr. Benjamin Brown, a provision dealer of West Hartlepool. This enterprising tradesman carried on business as "The Danish Butter Company," and put a ticket in his window, "Danish Butter." Enter a customer. "A pound of shilling butter, please." Mr. Brown took from a pile of packages standing exposed to view on the counter one package, received a shilling, and the sale was complete. The package turned out to contain margarine, not butter. The customer was one Thomas Wheat, inspector of nuisances for the borough of West Hartlepool. There was not upon the pile of packages anywhere displayed a conspicuous label, though the wrapper round the package sold had "Margarine" printed on it in conspicuous letters.

You will observe, please—for it is the essential fact in the case—that there was not on the counter a lump of margarine from which the quantity required by the customer was cut. The bulk was evidently kept in some cellar or back room, where the weighing was done; and the pounds and half-pounds ready weighed and wrapped up were all that were "exposed for sale" in the shop. Thus a customer could not see any margarine in the shop at all, but only a heap of packages in paper, which might contain anything.

This leads us to the point of the case. The nuisance man summoned Mr. Brown for not attaching to "each parcel exposed for sale by retail" a label with the word "Margarine" printed thereon in letters one and a half inches square. Said Brown, "The margarine was not 'exposed.' On the contrary, it was covered up in paper." The Durham County justices, before whom Brown was summoned, adopted the tradesman's view, whereupon the local authorities appealed to the High Court. And there the judges took an opposite view. They said, "These packages were exposed for sale on the counter. True, the customer could not see the margarine itself, but he could see the package; and an exposure of a covered package of an article, if the package or the contents thereof is for sale, is an exposure of the article for sale within the meaning of the Act.

So that if you keep your margarine in a covered parcel—for instance, a tub with a lid on—you must label the tub as required by the Act. If you keep a heap of weighed pounds and half-pounds on the counter, or on a shelf exposed to view, you must label the heap.

The preceding part of this section applies to sales of margarine by the retailer. Now we come to certain law which applies to

Sub-section ii.

THE WHOLESALE DEALER

in margarine, as well as, in some cases, to the retail dealer.* This trader is subject to restrictions hardly to be paralleled, except in the case of the dealer

*In the cases where a rule applies to both wholesale and retail dealers, I will mention the fact; otherwise, the law as laid down in Sub-section ii. applies to the wholesale man only.

in intoxicating liquors. The word "dealer" is practically a new one in the law, and was used in the Margarine Act of 1887 to meet the difficulty raised under the Food and Drugs Act (1875), where the words used are "person (who) shall sell." Strange as it may seem to the lay mind, it is not always easy, in law, to say who is a seller. The Margarine Act, therefore, employs the wide word "dealer."

Now who is a dealer in margarine within the meaning of the Act? It is, practically, anyone who handles the article in the commercial sense. His dealing with it may be wholesale or retail. He may be the manufacturer; he may be the importer; he may be a person by whom margarine is consigned to another, or the person to whom it is consigned; he may be merely a commission agent, who takes orders which he sends to be executed by a merchant. Finally, he may be anyone who "*otherwise*" deals in the article, meaning thereby anyone who is nearly akin to a manufacturer, importer, consignor, consignee, or commission agent. Thus, I suppose, a merchant who was not an importer would come within the definition.

The word "importer," too, has a wide statutory meaning. It means any person who, whether as owner, consignor, consignee, agent, or broker, is actually in possession of, or is entitled to have possession of, the article. For example, Buttafat, a merchant in Leeds, orders from a produce broker in Liverpool a ton of margarine. The broker, in turn, orders it from a manufacturer in Chicago. The Chicagoan sends the stuff over with a consignment note, to the effect that the broker can have it on paying the price to some agent in England. The broker is an importer within the meaning of the Act.

Let us suppose he pays and obtains the ton of margarine from the carrying ship. He forthwith addresses it to Buttafat, at Leeds, and places it on the rail for carriage to the Yorkshire city. He then becomes a "dealer" under another heading—he is a consignor; and Buttafat is a "dealer" because he is consignee.

Now an importer is liable beyond other men. He is specially dealt with in some respects. The Customs officers keep an eye open for his little games. He is a potential smuggler. Except that, apparently, the Customs people have no power to destroy margarine, it is in much the same plight as spirits and tobacco. The importer must see to it that every package is *conspicuously marked* "Margarine" or "Margarine-Cheese," as the case may require. If not, the Customs people may prosecute him before a magistrate. *The penalty* is: for the first offence a fine not exceeding £20; for the second offence a fine not exceeding £50; for any offence subsequent to the second, a fine not exceeding £100. Moreover, when an importer has offended for the third time, and the Court is satisfied that the offence was committed by his personal act, default or culpable negligence (whatever "culpable" may mean), he may be imprisoned for a period not exceeding three months, with or without hard labour. But the magistrates are only to inflict sentence of imprisonment where they are satisfied that the justice of the case will not be met by a mere fine. That is, where they believe that the offender is wilfully defying or trying to evade the law.

One other thing the importer should look to. All imported margarine must be, when forwarded by a public conveyance, *duly consigned as margarine*. Thus it will not do for the consignment note to describe the goods as "provisions," or "grease"; it must say "margarine." And a Customs officer, inspector of nuisances, medical officer of health, properly authorised police-constable, or Inland Revenue officer, may, on suspicion of infringement, break open a package and take a sample. What he is to do with the sample I will show presently.

Now let us come to all dealers, whether importers or not. There is first of all to be noted that whenever a dealer sends margarine by a public conveyance he *must consign it as margarine*, and not otherwise. He must not describe it to the railway company as "provisions," nor label the package as such. If he does, he is liable to be prosecuted; and any one of the officials described above (*see* preceding paragraph) may break open the package and take a sample.

The sample is to be dealt with as follows (N.B.—I am referring only to a sample taken when the margarine is in course of transit by public conveyance): The person taking the sample must send a portion of it to the consignor, if the consignor's name be upon the package. He must send it by registered parcels post, if possible; if not, by some other means. Then the procedure goes on just as usual under the Food and Drugs Acts.

It is sometimes important to be able to trace a package of margarine to its source, if one may be forgiven for applying such a figure of speech in such connection; and it has accordingly seemed good to our rulers and governors to enact that every manufacturer of margarine shall **register his factory** at the office of the local authority—be it Borough, City, or County Council. The local authority must forthwith transmit the particulars to the Board of Agriculture, whose inspector makes a note of it. Probably he makes the note "forthwith," also; my own experience of Government Departments is that the one thing there done promptly is the making of a note—"minute," they call it.

Moreover, the manufacturer has **to keep a register**, open to the inspection of any Board of Agriculture official who drops in, wherein is recorded the *quantity and destination* of every single consignment of margarine sent out of his place. Penalty, £10 for the first breach of the law, and £50 for every subsequent breach—or as much less as the magistrates think right.

Formerly these provisions—to wit, as to keeping a register of consignments and registration of place of business—were confined to manufacturers. But as a very large quantity of the thousands of tons of margarine sold in the United Kingdom is manufactured abroad, this provision was found insufficient for the purpose. The law was, therefore, altered, and now **every wholesale dealer** must keep a register of the quantity and destination of every consignment sent out of his place of business, and must take steps to register his business place with the local sanitary authority. Thus he becomes liable to the visitations of the suave gentleman from the Board of Agriculture, and also to the penalties formerly meted out to the manufacturer alone.

The idea is this: An inspector of nuisances finds in a country village a tub of margarine, which tub is not duly marked as required by law (*see* the subsequent part of this section). He can prosecute the shopkeeper, if he likes; but he may prefer to have a shot at the wholesale man who sent out the tub improperly marked. Or he may find margarine being sold, quite *bonâ fide*, as butter. "Where did this come from?" he inquires. "I got it from Splash & Co. of Birkenhead," the smitten shopkeeper replies. Up goes a note to the Board of Agriculture; Board of Agriculture sends suave gentleman to Birkenhead. He, spotless and polite, appears unto Splash & Company. "I should like to see your register of consignments." The same being forthwith brought to him, he runs his Agricultural finger up the columns and finds an entry thus: "1902, March 10th, Green, Slocum-Pogis, two hundredweight." Then Splash & Company find the suavity turned to a most Agricultural indignation, and are surprised when, a day or two afterwards, they receive a piece of blue paper, urgently requesting their attendance at the Birkenhead Police Court at an early date.

I have said something of the **marking of packages**. This *applies to every dealer, both wholesale and retail*, and is quite distinct from the labelling of margarine exposed for sale by a retailer. It is an offence under the Act for any dealer to have in his possession a package of margarine that is not marked on the package as such. Note, please, that the marking must be—

- (a) The word "MARGARINE,"
- (b) In letters at least $\frac{3}{4}$ in. square,
- (c) Which must be marked on the package, whether open or closed; it must not be simply on a label or ticket tied to or fastened on the package.
- (d) The word must be branded, or durably marked. Chalk will not do, for instance; nor anything else that will rub out.
- (e) The marking must appear on the top and bottom and sides of the package.

The object is so that anyone may know a package of margarine to be margarine as soon as he claps eyes on it. Also, so that the mark of the beast may not be added when Mr. Inspector appears, and be effaced so soon as he has turned his back.

Now we come to

Sub-section iii.

THE PROCEDURE UNDER THE MARGARINE ACT.

It always begins with the **taking of a sample**; and here let me point out a little distinction that may not be known to the lay public, and that has, I know, escaped the notice of many of the persons who have to administer the Act. Under the Sale of Food and Drugs Acts, an inspector or other person desiring a sample for the purpose of a possible prosecution must buy the sample. Why? Because it is necessary to prove a sale of an adulterated article.

But in the case of margarine it is otherwise. An officer empowered to take samples *may take without payment a sample of butter, or substance purporting to be butter, exposed for sale.* I have italicised the last few words because I want you to notice them particularly. To begin with "butter or substance purporting to be butter." How does a substance "purport to be butter"? The answer is not difficult: By not being labelled "Margarine" in big letters. If the officer sees a package or heap labelled "Butter"—well, clearly that purports to be butter. And as the law says that all margarine exposed for sale shall be correctly labelled, if a substance looking like butter be exposed for sale without any label on it, clearly it purports to be butter also.

On the other hand, if an officer wants a sample of that which is frankly and legally labelled "Margarine," he must pay for it. He may want it to see if it is wholesome as food and not dangerous to health, in which case he must proceed under the ordinary adulteration law. But if he wishes to see whether butter is wholesome, or adulterated, he can take a sample without payment; the same *applies to cheese.* If a cheese-like pile is not labelled, it purports to be cheese, and a free sample can be taken.

As to what is to be done with the sample when it is taken, the law is the same with regard to margarine and butter as to other foodstuffs; and the reader is therefore referred to the general chapter dealing with adulteration.

The enforcement of the Margarine Act is left in the same hands as those which attend to adulteration generally, and the course of procedure—the summonses and so on—is the same. Again I refer you to the general chapter.

But there are one or two matters wherein the proceedings may differ in a margarine case from an ordinary adulteration case.

In the first place, under the Food and Drugs Acts, the person who *sells* is the person hit by the law. Under the Margarine Acts a *dealer* may be hit though he has not sold an ounce. In the second place, in a prosecution under the Margarine Act it is not necessary to prove that anyone has been prejudiced or injured by the alleged offence.

In the third place, under the Sale of Food and Drugs Acts, a person who is charged with the offence of selling adulterated goods can get off only if he can show that he purchased with a *written warranty* of genuineness (see p. 1191). Under the Margarine Act (s. 7) a defendant can establish his *innocence* by showing that he purchased the margarine as butter, with a *written warranty or invoice* to that effect. He must also be able to establish that he really believed it to be butter, and *sold it in the same state* as that in which he purchased it.

The butter and margarine man is a much beregulated individual, no doubt; but this is an advantage. I have already explained what amounts to a warranty, and it is obvious that a mere invoice is not usually a warranty. For instance, an invoice saying, "Mr. Blank, Bought of Dash & Co. 100 pounds lard," is not a warranty that the lard is pure. But by reason of the words "or invoice" in the Margarine Act, an invoice merely containing

"Mr. Blank, Bought of Dash & Co. 100 pounds butter," would be a good defence to a prosecution where Blank was charged with selling the substance as butter when it was really margarine, or with keeping it in his shop unlabelled, or not wrapping it in marked paper.

The moral is—keep your invoices; and when you are summoned, within seven days from the day the summons is served, send to the prosecutor a copy of your invoice; with it enclose a notice in the following form:

"August 20th, 1902.

"Sir,—Take notice that on the hearing of the summons taken out
"by you against me under the Margarine Act [*or* Sale of Food and
"Drugs Act] I intend to rely upon the invoice [*or* warranty] of which
"I enclose a copy. I received this invoice [*or* warranty] from Messrs.
"Dash & Co., of 416, Great Nought Street, Banchester.

"Your obedient servant,

"BENJAMIN BLANK."

You must also send to Messrs. Dash & Co. a similar sort of notice—this, for instance:

"August 20th, 1902.

"Sirs,—I have been summoned to attend the Easthampton Police
"Court on the 7th September, on the charge of [here set out the charge
"as in the summons—as, for example, 'selling one pound of margarine
"without wrapping the same in marked paper, contrary to s. 6 of the
"Margarine Act, 1887']. I beg to give you notice that the alleged
"margarine was bought by me from you on the 1st day of August, 1902,
"under an invoice [*or* warranty] dated the 31st day of July, 1902, and
"that I intend to rely on the said invoice [*or* warranty] on the hearing
"of the summons.

"Yours truly,

"BENJAMIN BLANK."

Be sure you keep copies of both these letters. Send the letter to Dash & Co. by registered post, and pay the small extra Post Office fee to have the receipt for the letter returned to you. Then, when the hearing of the summons comes on, take with you your invoice (or warranty), and your copies of the two letters, and draw the attention of the magistrates to section 7 of the Margarine Act, 1887, and section 20 of the Sale of Food and Drugs Act, 1899.

The person who is alleged to have given the invoice or warranty can then appear as a witness, and the case may be adjourned for the purpose of allowing him to be present. He is not compelled to come, nor can he be fined then and there if it should appear that he is the guilty party. But he can be summoned and dealt with under the Food and Drugs Acts (*see* p. 1210).

Remember, also, that an invoice (like a warranty under the Food and Drugs Acts) is no defence if it was given by a person resident outside the United Kingdom, unless you can further show that you took reasonable steps

to ascertain that it was true, and can convince the magistrates that you did in fact believe that it was true. This section makes it much *better to get your butter from a British or Irish firm*. I know this is not possible in all cases; for the simple reason that our farmers do not make enough butter to supply the home market. But if you get your butter from Denmark, it is safer to have it invoiced to you by some British agent.

The agent then becomes responsible if the article is margarine. Whereas if you get your butter from Denmark direct, and have it invoiced direct, and some of it turns out to be margarine, your invoice does not help you unless you can show that you took reasonable steps to find out if it was a true invoice. Which means either nothing at all, or else that you have tested the article before exposing it or offering it for sale. If I were you I would ask the Danish manufacturer or merchant to get his British agent to make out and forward the invoices. It will be a protection to you, anyhow.

I would give you another word of warning about this invoice defence. Be sure to **be in time**. You must send the notice above described to the purchaser (*i.e.* the prosecuting purchaser) *within seven days* after the summons is served on you. Now a summons may be served by being left at your house or place of business; and possibly it may be left when you are away from home. When you come back, and the nasty blue pill is handed over to you, ask, "When was this left?" If your informant says, "Monday morning," you know that you have until Sunday to serve the notice. For the seven days include the day the summons was served and the day the notice reaches the person to whom it is addressed. Be very careful about this; because if you are out of time by a single hour, no matter how good an excuse you may have, you are shut out from this defence. And this defence is almost the only one you have, provided the analysis of the prosecution is correct—which it generally is, by the way.

Please do not understand me to say that the "warranty or invoice" defence is the only one open in a margarine prosecution. There is another defence similar to one of the defences under the Bread Act. I call it the **Unworthy Servant Defence**.

Suppose you are an employer—a retail provision dealer. You sell margarine in the ordinary course of your business. You have proper labels in proper type to be stuck on the lumps of margarine behind the counter. You have taken care to procure thousands of paper wrappers whereon "Margarine" stands out in bold isolation. You have instructed your young men always to plant a label on every stack of the sham butter; and never to sell so much as an ounce without wrapping it in a proper wrapper.

Nevertheless, one fine day, business being slack, you have taken the wife out into the country for a drive, leaving young Spriggin in charge of the shop. And young Spriggin, being young, and therefore careless, having not the fear of the Margarine Act before his eyes, delivers to a pretty young woman who comes in to buy, one half-pound of "Le Dansk" without wrapping the same in the mystic marked paper. The charmer who smiled so sweetly when Spriggins

murmured politely, "And the next?" was, alas! a "copper's nark*," being the wife of an inspector of nuisances. Within a month you get a summons. You stare at it in amazement for a while; then you see the date, "for that you did on the 8th day of July." "Eighth of July!" you ejaculate. "That was the very day——! Maria!" The wife of your bosom, being thus summoned, appears and confirms your recollection. Yes, it *was* the day—the very day you took her for a drive. Don't you remember what a nice tea you had at that little inn near the river? Yes, she remembers it well. Do you take her out for the day so often that she would be likely to forget?

Thus fortified, you tax the giddy Spriggin with the crime. You wither him with your scorn. Perhaps you dismiss him on the spot. But if you do dismiss him, be sure to ascertain his address. For you must, your shop's reputation and your own pocket being at stake, saddle him with the blame. Let me tell you **what to do**. Hie forthwith to the office of the clerk to the magistrates. Tell him that you have been summoned. Tell him, further, that the real offender is one Augustus Spriggin of such an address. Ask for a summons against Spriggin returnable at the same time on the same day as your own. The clerk will take you to a magistrate, and you will there "give information"—in other words, tell him the facts—a summons will be issued against Spriggin; and that uncared-for servant will appear with you at the police court.

When the case is called on, the lady of alluring demeanour, the female "policeman's nose," goes into the witness-box and testifies that she, on such a day, bought at the shop of John James, the defendant, one pound of butter—at least, she asked for butter; that she was served with a pound of something which she promptly handed over to Inspector Sterne; that this something, when handed to her by the shopman, was wrapped in plain paper. (Paper produced and found to be plain.) "That will do," says the prosecuting solicitor.

Then comes the turn of you or your solicitor, or writer, or counsel. If you conduct your own case—a most unwise proceeding as a rule—you ask the young woman in your sweetest tones to look at you. She looks, demurely. "Tell the Court—did *I* serve you?" Perhaps she cannot remember. "Look at this young man"—pointing to Spriggin, who looks like a detected pick-pocket—"Did not this young man serve you?" If she is still doubtful, follow it up by this one—"Will you swear he didn't serve you?" This is bound to bring her down. She will not swear. Then ask her if she saw you in the shop at all—will she swear she did?

I assume that the prosecution can prove the offence. When they have done so, you step boldly into the witness-box, take affirmation or make oath, and tell your plain tale. "Your worship! On the 8th of July I was not in my shop at all. I took my wife out for a day's drive. We started at 9 a.m.; and got back at 9.30 p.m. I left this young man—Spriggin—in charge of the

* "Nark" is thieves' slang for "nose," as "copper" is for "policeman." An innocent-looking person not in the police force, but in the employment of the police, is called by thieves a "copper's nark."

shop. I believed him to be entirely trustworthy. I have plenty of marked margarine paper in my shop (*here produce a few sheets of it*), and my assistants have the most stringent orders to use it. I knew nothing about the offence having been committed until I was served with the summons. I have reprimanded (*or dismissed*) my assistant, and have summoned him here to-day." Add, if it be the truth, "I have never been charged with anything before, your worship—and I have kept a shop for — years."

To corroborate your story of absence from the shop, call your wife. To corroborate as to having plenty of marked paper, and as to having given strict orders that nothing else should be used, call an assistant or two, if you have other assistants. And if Spriggin goes into the box and testifies, cross-examine him by asking whether you had not given him orders to use the "Margarine" paper, also as to whether he did not commit this offence "off his own bat."

If the worthy justices believe your tale—that the offence was committed without your knowledge, consent, or connivance, and that you have used all diligence to conform to the Act, they will convict Spriggin, and let you go free—no doubt warning you to "be more careful next time," as the manner of justices is. So shall vice be punished and virtue dismissed with a caution.

In this respect the dealer in margarine is more fortunate than the dealer in other foodstuffs. A person charged with adulteration, except under the old Bread Acts (which are practically obsolete) and under the Margarine Acts, cannot escape by reason of the fact that the adulteration was actually the work of a servant, even if the servant can be proved to have done it wilfully, for his own purposes. This I show in dealing with the important question of milk.

These are the only defences special to the margarine dealer, viz. (1) invoice misleading, and (2) dishonest servant. And it may, perhaps, be as well to add that it is *of no avail merely to prove* someone else to have been at fault and yourself blameless. You must, in order to escape yourself, get a summons against the person whose fault you say it is.

The dealer in margarine and the dealer in butter have, of course, all other defences that could be used by the ordinary person in a prosecution under the Food and Drugs Acts. What these are, is shown in the chapter dealing with the general aspect of those Acts.

As to penalties—the punishment was formerly only monetary: a fine of £20 (or less) for the first offence; £50 (or less) for the second; and £100 (or less) for any offence after the second. Nowadays the magistrate may, for the third and subsequent offences, imprison the offender for a period of not more than three months, with or without hard labour. When I have appeared for tradesmen in adulteration cases, I have frequently been asked, "If I am convicted, what shall I get?" My answer invariably depended on the magistrate who was to try the case. In the City of London, for example, the aldermen generally fine heavily. So do some of the metropolitan magistrates. Other justices, on the contrary, seem to think lightly of the matter, provided no absolutely poisonous adulteration has taken place. So

that if you come before Mr. A., you may catch the heaviest possible; while if you had come before Mr. B., you would have got off with a sovereign or two.

The Margarine Act, 1887, does not apply, as has been decided, to the **keepers of refreshment rooms**. They do not "expose for sale by retail" within the meaning of the Act. It was so decided in a case in which Pearce's Dining and Refreshment Rooms were concerned.

Pearce's have a great number of dining and refreshment rooms in London; amongst others, one in Great Eastern Street, Shoreditch way. They call it by the name of *The Wilberforce*. They sell cheap and substantial refreshments for the working man—none of your patés and kickshaws, but good, solid feeding. One thing sold is a "slice," which means a thick slice of bread, spread with something like butter. Another thing is a haddock, with which the customer is given a lump of the buttery substance—to make the fish softer and more tasty. This buttery-looking substance is really margarine, being a mixture of Danish butter and margarine; and the mixture is not labelled.

The Butter Association took it into its collective head to have a shot at Pearce's. So it sent one Moore, one of its officers, to *The Wilberforce*. Moore asked the young woman behind the counter for two pots of coffee and bread-and-butter. He was served with the coffee and two "slices." He subsequently asked for four-pennyworth of dry bread and three-pennyworth of butter. The young woman—albeit the order was unusual—was about to execute it, when the manager came up. He seems to have had some inkling of what Moore was at, for he said, "We will put any amount you like on bread; but we don't supply any to be taken out from any of our branches. What margarine we have cannot be supplied to be taken out."

Moore reiterated his demand, and ultimately said, "I want it for analysis," and offered threepence. But the manager would not supply it. He pointed to a conspicuous label hung up over the plate of "slices" which was as follows:

"PEARCE'S DINING AND REFRESHMENT ROOMS, LIMITED.

"NOTICE.

"Slices $\frac{1}{2}$ d. each.

"Nothing but a mixture of the best Danish butter and margarine is sold at this establishment."

Four of these notices were on the walls; and Moore admitted that they were conspicuous enough. In fact, nobody could buy a "slice" without seeing one.

Moore walked out of the shop without any margarine, and the Butter Association promptly summoned the Refreshment Company. They charged them with exposing for sale by retail margarine not labelled in accordance with the Act. But it would not do. Lord Chief Justice Russell and Mr. Justice Cave held that Pearce's did not come within the purview of the

Act; and in deciding the case they were guided by that part of the Act which says that margarine sold by retail shall be delivered to the customer in a paper wrapper on which "Margarine" should be printed in large capital letters.

"It would be absurd," said the Chief Justice, "to apply the provision as to using a wrapper to each separate piece of margarine when spread on bread or used with a haddock." In other words, the legislature never meant to have bread and margarine, sold to be eaten on the spot, wrapped up in paper. It was obvious, therefore, that the "sale by retail" did not apply to this kind of sale by retail, but to a sale, where the customer took the article away with him.

I want you to **be careful**, and not to run away with the idea that if you are asked (you being keeper of a refreshment room) for "bread and butter" that you can without any notice to the customer supply him with bread and margarine. If you do, you would be hit under the section of the Food and Drugs Acts as to supplying goods not of the nature and quality demanded. Pearce's could not be prosecuted for that offence, because they gave ample notice of what they were selling by their conspicuous notices. Mr. Moore knew he was buying margarine, and knew that nothing else was kept in the shop; so there was no deception.

SECTION II.

MILK.

Name and address on cart—Or pails—A fine point—Whether milk sold from cart or pail—Name to be conspicuous—Is trade name sufficient?—Samples in course of delivery—No request or consent—Every can a separate offence—Skimmed and machine-skimmed milk—When sold condensed—Label on tin—Running warranties relating to milk—Case of importance to the milk trade—The Government standard for milk—The effect thereof—Raising a presumption—Milk should be stirred—Otherwise risk of conviction for "abstraction"—Notice to the purchaser—Spiers & Pond's case—Danger of mixing two lots of milk—Preservatives in milk—Powder to be dissolved before mixing—Importation of condensed milk—Adulterated or impoverished milk—Milk delivered in several cans—Whole up to standard, but some cans deficient—How to avoid prosecution.

MILK, besides being one of the most useful and necessary articles of diet, is one of the most frequent sources of prosecutions for adulteration. Scientific men who concern themselves with the public health are particularly anxious to ensure that the milk supplied to the public shall be pure, wholesome, and nutritious; and this for the best of reasons. Milk is not an article of special importance to adults of ordinary health and strength. The average man and woman use very little of it. But it is, for two classes of the community, the staple article of diet; and these two classes being unable to look after themselves, the public officials try to see that they are not cheated. I refer, of course, to infants and invalids. It may be said, with little risk of exaggeration, that the milk supply is the very life of the nation; for everything depends on the health of the nation's children.

It becomes important, therefore, to see to it that milk is really milk: that it is of proper strength, neither diluted by watering-down nor weakened by robbing it of any of its normal properties; and to this most essential end the law has been made stringent on the subject of milk adulteration. Of recent years, too, milk has been largely sold in the form known as "condensed," and in that form has gained great favour. Indeed, there are medical men who advise that the milk to be given to infants should always be condensed milk. The latest Food and Drugs Act, therefore, contains stringent regulations on the subject of condensed milk.

You must note that in this section I only expatiate upon the law as it relates to milk alone; not to the law which affects milk in common with other food. That is to be found in Chapter I. There are certain sections of the Food and Drugs Acts passed especially to meet the case of dairymen and milk-sellers, and also dealers in condensed milk. The first fact of importance to the milkman is this:

Every milkman who sells milk in the ordinary way in which milk is sold in towns and large villages—that is to say, by delivering it to his customers—**must have his name and address on the cart**, perambulator, or whatever may be the vehicle the milk is carried in. It will not do, either, to try to evade the law by not having a vehicle; for even if you use the old-fashioned yoke and pails, you must have the name on both pails. The Act is so framed as to hit not only a milk-seller who goes round from house to house and from street to street, but also any other milk-seller who sells milk in the open. The words of the statute are "in any highway or place of public resort sells milk."

This would cover the case of the dairywoman in St. James's Park. That lady, as most Londoners know, has acquired some sort of right to have a stall in a particular corner of the Park; and there she sells milk—genuine milk; the cows are there to testify—and buns and the like creature comforts. This unique dairywoman must now *mark her cans or her pails* with her name and address, because she sells milk "in a place of public resort." It would also apply to, *e.g.* Messrs. Spiers & Pond's refreshment stalls at the railway stations. Naturally, the section only applies where milk is sold from a vehicle or from a "can or other receptacle."

When a man sells milk which he carries in a cart in bulk, but actually serves the milk from a can, a **very fine point** arises. A retail milk-seller, named Skelton, sent round a servant of his, one Anderson, to sell milk in Mosboro'. The man drove a cart, in which were three three-gallon cans, the cart being a high two-wheel farmer's cart—not a milk-float. Leaving the cart in the road, Anderson took one of the cans in his hand, and went to the houses within a radius of about twenty yards from the cart. Amongst others, he served from the can a shopkeeper named Stanton with a pint of milk. Stanton's shop was twenty yards from where the cart stood. An inspector for the county of Derby was on the watch, and he issued a summons against Skelton for selling milk from a can which did not bear his name and address. It was true that neither name nor address were on the can; but the name and address

were on the cart. And Skelton contended that there was no need for him to have the cans labelled as well. The magistrates acquitted Skelton.

Then the inspector appealed, contending that "vehicle" does not mean a high cart, but a hand-cart or a "float." This contention was not dealt with by the judges; but I should say it was quite wrong. But the second point had more in it. It was this. The point is, in these cases, *whether the sale was from the can or from the cart*. The justices were, therefore, wrong in holding that because the name was on the cart it need not be on the can. The true meaning of the Act is that where the sale is from the can, the name and address must be on the can. But where the sale is from the cart, the name need only be on the cart. Of course, in one sense, the sale of milk is always from the can. What is meant is that if the customer comes to the cart, or the cart goes to the customer, and the customer is served from the can that is in the cart when the milk is sold, the sale is from the cart. Where, however, the milkman takes the can out of the cart and goes round with it in his hand, calling on the customers, the sale is from the can.

The wise milk-seller will, therefore, have his **name on both cart and cans**.

And they must be marked boldly. "Conspicuously inscribed," says the statute. One point I am not very sure of, and that is whether the "name" is to be **the trade name or the real name** of the milk-seller. You know what I mean. Thomas White has carried on a successful milk-round for several years. Then he dies, and the widow sells the round to her late husband's old servant, John Brown. Thomas White has had his carts painted "Thomas White." Must his successor paint this out and paint on "John Brown"? If he does, he will probably lose some of his customers, and he will probably wish to keep up the "Thomas White"; or, as a lawyer would put it, to trade under the name of Thomas White.

I know of no case decided on the point hitherto; though it is a point of considerable importance, and one that must have cropped up before now. So I shall have to offer you an opinion by the light of my own construction of the statute. And in my view it will be sufficient for the milk-seller to use the name under which he trades. After all, the only object of the section is merely to aid the authorities in tracing offenders; and if you mark **your cans or cart** so that the officer who takes a sample knows whom to summon, no more is needed. But although I think the magistrates would not convict if a genuine trade-name were used, it would, of course, be safer to use the real name—then no question could arise. I should say that a mere descriptive name, *e.g.* "The Cowgate Dairy," would hardly suffice, because it is not the name of anybody, and never was. The only time when these fancy names are permissible is in the case of limited liability companies. For example, "The Cowgate Dairy, Limited," would be good, because it is the proper name of a legal person—a corporate body being, in law, a person.

Failure to mark the cart or can with name and address is *punishable by fine* not exceeding £2.

Now there is something as to the **taking of samples of milk different**

from the law as to taking of samples of food generally. I have already told you that certain persons may procure a sample of any food or drug *in the course of delivery* to a purchaser or consignee, provided that he take the sample at the place of delivery; *e.g.* the inspector cannot break open a milk-can consigned from London to Hull when the can is at Peterboro'. He must wait until it reaches Hull. There is a distinction to be noted here as to milk. In all other cases, food in the course of delivery can only be sampled at the request of, or with the consent of, the consignee or purchaser. In the case of milk there need be no such request and no such consent.

That is to say, if I consign three tubs of lard to you, I being in London and you in Hull, and the Hull inspector of nuisances believes these tubs to be bad, having had information from some place on the route, what must he do? Naturally, he wishes to drop on the bad stuff as soon as possible. He must come to you, and **ask your permission** to open a tub and take a sample, if he **desires to take** a sample at the railway station or before the tubs are actually in your place. But if I consign milk to you in the same way, the inspector can take a sample at Hull without saying "By your leave." A seller, consigner, carrier, or other person having charge of the milk, is liable to a fine not exceeding £10 if he refuses to allow a proper officer to take what he wants.

The taking of a sample of milk in course of delivery is, of course, with a view of taking proceedings against the seller or consigner. And it is provided, therefore, as a matter of fairness, that the person taking the sample shall be obliged to *send part of that sample to the seller or consigner*, so as to give him a chance of having it analysed on his own behalf: that is, if the seller or consigner has his name on the can whose contents were sampled. If the name be not on the can, the sampler need not send any of the sample to the seller or consigner, though he knows who it is quite well.

This law about taking milk in course of delivery *applies to condensed milk*; but in this case the officer must take a whole tin. He cannot ask for one to be broken open in order to supply a sample to him. And the part sample is to be sent to the consigner or seller whose name is on the package of tins—*i.e.* not necessarily to the person whose name is on the tin.

It may seem a little bit hard on the milk-seller; but it is a fact, or rather it is the law, that **every can of bad milk is a separate offence**. By this I mean that if the inspector takes samples of milk in course of delivery from five cans and they are all bad, the seller or consigner is liable to have five summonses, and to be fined five separate fines. Every can of milk is a unit. And the reason seems to be that you might have five cans in the same consignment of which only two, say, contained bad milk. It would be impossible to say that the milk as a whole was supplied contrary to law. And there is no process whereby one can be summoned for adulterating part of something. Therefore there is no option (unless the adulterator is to escape altogether) but to treat each receptacle as a separate entity.

There has been no case in the High Court, as far as I have been able to discover, on the question of condensed milk tins. But I suppose, on the

analogy of the other, that every tin would be a separate entity ; and that if you found a package of a hundred tins containing two bad tins and ninety-eight good ones, there might be two summonses. This, however, is doubtful ; because the Act seems to treat a package of condensed milk on the same footing as a can of milk. And if that is the right reading of the law there could be only one summons on each package ; not one on each bad tin in the package. I daresay this will be settled some day ; and the argument ought to be a pretty one.

One of the commonest kinds of adulteration of milk is selling **skimmed milk** as "milk." Now the law is clear that this is an offence. Because skimmed milk is milk from which some of the nutrition has been extracted. It is, in other words, impoverished. And a child or an invalid ordered to drink two pints of milk per day as his sole diet would starve on two pints of skimmed milk. **Machine-skimmed milk** is even more impoverished than the other. And a person who sells either of these commodities when asked for milk, commits an offence under the statutes—the offence of supplying an article not as demanded by the purchaser, but to the prejudice of the purchaser. The same applies where the milk has been only partly skimmed.

As to condensed milk, it is a separate offence to sell or expose or offer for sale **condensed separated or skimmed milk** unless the tin or other receptacle bears a label having the words, "Machine-skimmed Milk" or "Skimmed Milk" on it. These words must be printed in large and legible type ; and any offender is liable to a £10 fine. The law applies to manufacturers, as well as to wholesale and retail traders. Thus, a manufacturer from whom condensed skimmed milk has been ordered by a wholesale provision dealer, sends a package to his customer without the label on the tins. For each tin so unlabelled he may be fined £10 for "selling." The wholesale man sends a gross to a retail customer, who, when he sees that the tins are not labelled, promptly returns them all. The wholesale man is liable to be fined for "offering for sale." If the retailer accepts the consignment, and puts up half a dozen tins in his window, he may be hit by six summonses for "exposing for sale."

The other two common forms of adulteration are (a) the addition of water or skimmed milk to milk ; (b) the subtraction of part of the cream without actually making the milk skimmed milk. These offences are not necessarily committed by the milk-seller ; they may have been done by the cow-keeper, farmer, or wholesale milk-dealer, before the retailer sees the milk.

How can the retail milk-seller protect himself? Well, he can do so by refusing to buy milk except under a *written warranty*. Of the general nature of warranties I have already treated (Chap. I., Sect. II.). If you read the pages referred to, you will find that a warranty may be contained in the contract itself or may be a separate contract. What I mean is this:—Most retail milk-sellers have a term-contract, an agreement with a farmer or some other person to supply milk for a specified time at a specified price. Now this agreement may contain a clause warranting the milk to be "pure and unadulterated and with all its cream"—that is the usual clause. Or you may

have a contract with this clause, and insist on your seller labelling every churn "Warranted new milk with all its cream."

Here is a case from Margate. A Mr. Pilcher, of that breezy, healthy, noisy recruiting resort, was a retailer of milk. He had it from a firm of dairymen with whom he had a verbal contract only; and from 1897 to July, 1899, this firm supplied Pilcher with quantities varying from 20 gallons to 48 gallons a day. Now Pilcher became uneasy; and in July, 1899, he said to the firm of dairymen: "I trust you, right enough; but I'm told your verbal contract to supply the milk pure and sweet is no protection to me if I should be prosecuted, as every milkman is liable to be. Give me something in writing." The dairymen did so; and this is what they gave:

"We hereby warrant that each and every supply of milk sent by us
"to you shall be new milk unadulterated and with all its cream.

"(Signed) A. B. & Co."

Business continued as of old until 1901, when Mr. Pilcher had his cart visited by an inspector. A sample was taken. It proved to be deficient in cream. And Mr. Pilcher was charged at the Margate justices' court for that he "did unlawfully, with intent that the same might be sold in its altered state, without notice, abstract from a certain article of food—to wit, milk—a part of such article so as to affect injuriously its quality, substance, or nature." What was worse, the offence was proved.

But Pilcher was not at the end of his tether. He had given due notice to the wholesale firm that he intended to rely on the warranty above set out. He swore that he had sold the milk just as he received it; and he produced the warranty. "Oh!" said the prosecution, "this is not enough. There is nothing on the face of this document to show that it relates to the particular sale of this particular can of milk." "No matter," Pilcher replied; "I can prove that I got the milk from the firm who gave me the warranty; and that the warranty was intended to apply to this milk." The Margate magistrates agreed with Pilcher here. Then said the prosecution: "Still, Mr. Pilcher, you have not gone far enough. This warranty, on the face of it, forms no part of the contract (which was verbal) by which the dairymen agreed to supply you." Once more Pilcher made answer: "True; but that is not necessary. So long as I *had* a contract, and the warranty can be shown by verbal evidence on oath to refer to the goods to be supplied under the contract, I need prove no more." Again the Margate magistrates agreed with Pilcher.

But the prosecution took yet a third point. "There must," they said, "be a specific warranty with each delivery of milk." On which the undaunted milkman once more joined issue. And on which, also, the magistrates of Margate once more found in his favour.

The matter did not rest here, however. The public authorities of Margate appealed to the King's Bench Division of the High Court; and the three points were submitted to learned judges—

(1) Must the warranty be part of the contract to supply the milk?

- (2) Must the written warranty show on the face of it (that is, must it be written down) that it refers to the particular sale of milk?
- (3) Must there be a separate, specific written warranty with each delivery of milk?

No counsel appeared to argue the case for the milkman. But he had the satisfaction of winning on all points. The judges went very carefully into the matter, and decided—

- (1) That the warranty, upon the verbal evidence, did in fact apply to the milk sold.
- (2) That it was unnecessary for anything to be on the face of the warranty to show that it applied to the particular milk. Evidence, verbal or other, could show the connection.
- (3) That by the statute no specific warranty was necessary with each delivery of milk.

I make no bones about treating of this case at great length, because it is the most important to the milk trade of any decision for years past. You see, it does away with the necessity for a label, "Guaranteed pure and unadulterated, and to contain all its cream," on each can. It means that you (I am supposing you to be a milk-retailer) can have a time contract with your dairyman or farmer; and one written warranty to cover the whole of the consignments. If you are going to follow this course, I advise you to get a written contract to this effect:—

"To Mr. H. Jinks,

"Milk Retailer, 402, Tufnell Road, Herne Hill, S.E.

"February 17th, 1902.

"Sir,—I agree to supply you with 80 imperial gallons of new milk each and every day for six months, beginning on the 25th March, 1902, at the price of (7½d.) per gallon (free on rail at Blankey Station, G.W.S. Railway).

"Yours truly,

"F. ARMER."

Then get a second document addressed to you in the same way:—

"To Mr. H. Jinks,

"Milk Retailer, 402, Tufnell Road, Herne Hill, S.E.

"February 17th, 1902.

"Sir,—With reference to our contract of to-day's date, I hereby warrant that each and every supply of milk sent by me to you shall be new milk, unadulterated, and containing all its cream.

"Yours truly,

"F. ARMER."

This, according to the case of *Elliot v. Pilcher*, ought to pull you through. But, if it be possible, I would make Mr. F. Armer label every can—i.e. write on

the label some such words as these: "Sent under contract of February 17th, 1902." The reason is, that although you *may* show by verbal evidence that any particular lot of milk was in fact delivered to you by Armer under the contract, yet it is *much safer to have written confirmation* of the fact. An ounce of written evidence is, for purposes of carrying conviction to the magisterial mind, worth a ton of verbal testimony.

Please understand, I am not advising you, as a matter of prudence, to trust to one of these general warranties. I believe **the old way is the safer**. By "the old way," I mean the plan of labelling every can, "(so many) gallons warranted pure and genuine new milk containing all its cream." The other thing will pull you through at a pinch, if your evidence is carefully prepared. But the label on every can is far more safe and sound. Remember my parable of the coachman and the precipice.

I hope I shall not be suspected by my public of joking when I say that it is quite easy for a milkman (unless he has bought under a written warranty) to be convicted of adulteration when it is neither his nor any other body's fault or blame. He may be convicted of abstracting the cream, or even of the dire offence of "watering," when in very truth he is selling milk just as it came from the cow.

The reason is well known to those who know the cow and her little ways. Given a dry season, parched pastures, dried-up springs, and the most good-natured of cows will yield milk hardly good enough to pass the analyst. There will be a deficiency of everything except water. And, on occasion, the milk will be so poor as to raise a suspicion that some of its cream has been abstracted. This fact in natural history has had to be weighed by magistrates. Milk ought to contain, in every drop of it, a proportion of water, a proportion of solids other than fat, and a proportion of fatty matter.

But the difficulty for years has been to know **what is the proper standard of milk**. In other words, What percentages of water, solids other than fat and fatty matter ought you to find in milk? Chemists have found some difficulty in agreeing. The city analyst would give you the result of his analysis: "Water so much per cent., fatty matters so much per cent.," and so on; and go on to certify that only 7·9 per cent. of solids other than fat were in the milk, while genuine milk should contain not less than 8·5 per cent. of such solids. On the other hand, you might have a farmer who would swear that the milk came direct from the cow—that he saw the milking done, and himself carried the milk to the milk-seller; and the milk-seller would swear that he had not tampered with the milk, neither could anyone else have done so without his knowledge. Pity a poor magistrate in a case like this!

It was in response to a pretty general request from justices all over the kingdom that the Food and Drugs Act, 1899, empowered *the Board of Agriculture to fix a standard* for milk (including condensed), cream, butter, and cheese. Up to the moment of writing, the Board's only achievement has been to fix a standard for milk—a standard that has raised a great chorus

of complaint from milk-dealers. It is, they say, unnecessarily high, and will bring under the ban of the law a great deal of genuine milk in times of drought, when pasturage is poor. I am not competent to offer an opinion on such a point, being neither a dairyman, a farmer, nor a chemist. I merely wish to state as a matter of law that the standard may, if the Board should see fit, be altered; and if it is altered, the alteration will be notified in the *Gazettes* of London, Edinburgh, and Dublin.

Here is the standard as fixed by an Order published in the London *Gazette* of the 6th of August, 1901. It came into operation on the 1st of September, 1901:

MILK (except skimmed, separated, and condensed): 3 per cent. milk fat;
8·5 per cent. milk solids other than fat.

SEPARATED OR SKIMMED MILK (except condensed): 9·5 milk solids.

Now **this standard is not conclusive**; for the statute merely says that after the fixing of the standard it shall *raise a presumption unless the contrary is proved that the milk is not genuine or is injurious to health*. What is the practical meaning of this? By "raising a presumption" we mean what the late Lord Morris said about a *prima facie* case. "If," said he, "you see a man coming out of a public-house, wiping his mouth, there is a *prima facie* case that he has had a drink." And when you have a legal presumption, it means that you are to draw an arbitrary inference from certain facts. To return to our milk. If you are prosecuted, and the analyst's certificate shows "fatty matter 2·3 per cent.; solids other than fatty matter 7·6 per cent.," you are, *prima facie*, guilty of selling milk which is not genuine or is injurious to health.

But you can, if you are able, call evidence to show that the milk is genuine. You can call the farmer from whom you bought it; you and your men can give evidence; and you all swear you have not tampered with the milk since it came from the cow. You call such evidence as you can to show that no other person could have tampered with it. Thus, you prove that the milk is genuine. Then you bring other witnesses—medical men, for choice—who swear that the milk is not injurious to health. Thus you overcome the presumption raised up against you.

It will not be easy, mind. A good many magistrates will take refuge in this kind of thing: "The defendant's milk does not come up to the Government standard. That is admitted. It therefore becomes necessary for the defendant, if he is to defend himself successfully, to satisfy us that the milk is genuine and not injurious to health. This he has attempted to do, and in our opinion he has failed to prove it *to our satisfaction*." Something will, of course, depend on the quantity of difference between the sample and the Government standard. On a difference of ·1 per cent. you will more easily convince the Bench than on a difference of ·5 per cent. As far as the retailer is concerned, if he has a written warranty he is safe enough. It is the dairy farmer who really has to meet this standard. And in a drouthy summer the task is like to that set by Pharaoh to the Children of Israel—making bricks without straw.

A warning is necessary to all milk retailers. It is the first thing you ought to impress upon the mind of any new assistant or salesman. It is simply to **stir the milk** before measuring it out to the customer. It was for want of this simple precaution that Mr. Gower, a milkman in the West End of London, found himself in a police court. He had bought from a wholesale dairyman milk to sell by retail; and right good milk it was, too—creamy and pure. But Mr. Gower, or his assistant, forgot to stir the churn or can from time to time. There were a good many gallons; I am not sure how many. And when most of it had been sold, a milk inspector came along, a milk inspector in the service of the Vestry of St. George's, Hanover Square (the name seems to smell of orange-blossoms), and demanded a pint. On being served, he informed the salesman that he was purchasing this for analysis.

The result of the analysis was to show a serious deficiency in cream, a deficiency of no less than 33 per cent. This was only to be expected, because cream, as everybody knows, rises to the top, and if you do not keep on stirring the churn the first comers get too much cream and the late comers very little. Thirty-three per cent. is heavy—so heavy that some of the vestry's witnesses said it could not have arisen merely through want of stirring. Some cream must have been skimmed off, they said. The milkman, however, was positive on this point, and a chemist came forward who successfully confuted the vestry's experts by showing that he had conducted an experiment with a churn of milk, ladling it out without stirring it, and had obtained similar results. Thus the Baconian method—experiment—once more triumphed over the method of *a priori* reasoning. So was the magistrate convinced of Mr. Gower's honesty. He, therefore, refused to convict; but the vestry appealed, and upset the magistrate.

The offence charged was not that of supplying an article different from, and worse than, that demanded by the purchaser; but under the other section, which forbids any person, with intent to sell the article in its altered state without notice, to "abstract from any article of food any part of it so as to affect injuriously its quality, substance, or nature," and then to sell it when altered without disclosing the alteration. Now it would not strike the average man that there was any "abstraction" here. But if you come to think of it, every time there was ladled a pint of milk from the top of the churn, there was taken away—that is, abstracted—some part of the cream belonging to the lower pints.

It might not strike the average man that Mr. Gower had abstracted the cream "**with intent**" to sell it in its altered state. But if you come to think of it, a man who does an act, unless he be an idiot or a lunatic, must be presumed to intend the necessary consequences of that act. If, therefore, you abstract cream from milk, and then sell it as altered, you must be presumed to have intended to sell it as altered. Otherwise this part of the law would be practically null and void. "Intent" is a state of mind; and the mind of man can, by earthly tribunals, only be judged by his acts.

The appeal of Gower's case was heard by a Court consisting of the late

Lord Coleridge and another judge, and they were unanimous that, notwithstanding his honesty, Mr. Gower had broken the law. "Everybody knows," said my lord Coleridge, "that there is a tendency, unless the milk is kept stirred, for the cream and the richer parts of the milk to rise to the top. The lower part of the milk, if unstirred, is denuded or deprived of that richer part of the milk which gathers by natural laws on the top, and the milk-seller knows this. If the contention of the milkman were right, it would follow that the person served out of the last two inches would get an article not worth the money he paid for it."

It thus becomes *obligatory on the milk-seller to keep his milk stirred*, if he would avoid a prosecution. I have been surprised, very often, at the carelessness of milk-sellers in this respect. Sheer laziness only can account for a man running the risk of a £10 fine by not taking the very slight trouble to stir his milk. There are on the market churns with mechanical stirrers—a sort of piston arrangement. It is impossible to draw off any milk from one of these churns without setting the stirring apparatus in motion. And I strongly advise people who keep milk-shops to protect themselves against the carelessness of subordinates by using these churns.

You observe that the defence, "purchased with a written warranty," may fail under this section. In Gower's case, for instance, it was no good. The one impregnable defence is that **notice was given to the purchaser** of the alteration. Upon which two questions arise: (1) How ought the notice to be given? and (2) What is sufficient notice?

Upon these points the case of *Bennett v. Spiers & Pond, Limited*, is instructive.

Bennett was an inspector employed by the Holborn Board of Works. Spiers & Pond need no description. They had, amongst others, the refreshment room at Farringdon Street Station, and there they sold milk. Bennett went one day and bought a glass for purposes of analysis. I want you to observe (a) that the milk was handed to him in a glass marked in blue print with a notice to the effect that the milk was not guaranteed, thus: "Not guaranteed as new or pure milk or with all its cream"; (b) that on the counter was a notice in a frame and printed in distinct type:

"Milk Notice.—Spiers & Pond, Limited, purchase all milk sold by them "under a warranty of its purity and genuine quality, and take all possible "precautions to insure its supply to their customers in proper condition; but "they are unable to guarantee it as either new, pure, or with all its cream, "and (to meet the requirements of the Sale of Food and Drugs Act) do not, "therefore, sell it as such."

In point of fact, the sample supplied to Bennett was not "as such," by any means. It was 17 per cent. short of cream; and the Holborn Board summoned Spiers & Pond with great promptitude for selling milk from which cream had been abstracted without notice to the purchaser.

You will say, I expect, "Surely the blue writing on the glass and the framed notice were enough 'notice to the purchaser.'" Well, that was the

question. The Board of Works said No. "It only amounts to this," they said: "Spiers & Pond do not guarantee the quality of the milk. The Act of Parliament requires *notice of the alteration*, and this, we contend, means notice of the kind and amount of alteration. Thus, where cream has been abstracted, the notice ought to say, 'So much cream has been abstracted from the milk sold here.'"

It turned out that Spiers & Pond were morally guiltless. They had no intent to deceive; for what had happened was another illustration of the danger of not stirring milk. It appeared that the dairyman brought the milk in a big can. Without stirring it, he poured part of it into a smaller can and the rest into a churn. The small can was sent into the kitchen to the cook. The churn was the receptacle out of which Bennett was supplied; and the small canful had 17 per cent. of cream too much. The hard luck of Messrs. Spiers & Pond was that the churn contained one of the mechanical stirrers I have spoken of.

Lord Russell of Killowen gave judgment in favour of Spiers & Pond. He held that the notices were enough to satisfy the Act. But he must have thought the case very near the line, and must have been impressed with the prosecutor's argument as to the insufficiency of the notice. For he declared that he pronounced his judgment "not without hesitation."

The *practical moral* seems to be this: Whenever you pour milk from one vessel into another, stir first; and whenever you serve a customer, stir. If you are out on a round, though it may be unnecessary to stir before ladling out every pint, be careful to stir frequently, so as to give the cream no time to settle on the top.

Let me advise you, also, if you take the trouble to get a warranty with your milk, **never to mix one lot of milk with another**. I mean, if you have two people who supply you, and both warrant their milk sound and with all its cream, nevertheless sell each lot separately. Because if you mix them, and one of them was adulterated, or had had cream abstracted, you will find your warranties of no avail at the police court; and of not so much avail in getting compensation from the man who cheated you. You will find the reasons of this, with a touching example, given at length on pp. 1221-3.

One other hint I should like to give, and that is about the use of **preservatives in milk**. The milk-seller ought to be especially careful about this. I have dealt with the general subject of preservatives elsewhere, and have tried to give my readers—though it is a matter rather of natural science than of law—some idea of those preservatives that have been considered by certain authorities to be permissible. But there is danger in the case of milk over and above the danger in most other cases.

It is this. The farmer says: "The milk will never keep in this weather unless I put some preservative into it." So he puts in some (say) glaciale. When the wholesale dealer gets it he says: "The milk will go bad very soon unless I put some preservative into it." So he puts in more glaciale. Then it comes into the hand of the retailer, who wipes his brow and says: "This

milk will be sour before I have finished my round unless I put some preservative into it." And in goes more glacialine. The result is that by the time the customers are served, or by the time the inspector comes to take a sample, the milk is thrice preserved; and there is just three times the quantity of boric acid (which is the active constituent of glacialine) in the milk that there ought to be—just three times as much as there is any use for; because though one ounce will preserve a gallon of milk for 24 hours, three ounces will not preserve that gallon longer than 24 hours.

Very well, then. The inspector comes round, and takes a sample. The analyst certifies large quantity of boric acid. You are summoned—you, the unfortunate retailer. You cannot defend yourself with your written warranty, even if you have one; because you have added something to the milk since you received it. You fall back on the defence that the only foreign ingredient is a preservative—a harmless, necessary preservative. Reply, very likely, by the prosecution, "Such an enormous amount of boric acid is injurious to health," and although you may cite doctors by the dozen, they will probably bowl you out by saying that so much boric acid is likely to be injurious to infants.

It will be well, then, for every milk-seller to have an honest understanding with his wholesale people, and they with the farmer, as to **whether any preservative**, and if so, what kind **is to be used**; also as to **who** is to use it. It is very bad when the farmer uses one kind, the wholesale dealer another, and the retailer a third. And the whole disturbance arises because people are not open and honest. If the farmer told the wholesale dealer, the dealer would not put any more preservative in; and if the wholesale man, when he put any in, told the retailer, the retailer would know not to add more. (See p. 1164 as to report of the Departmental Committee on the use of preservatives.)

Again, if you use a preservative supplied to you in powder form, **be sure to dissolve it** before you mix it with the milk; or else keep on stirring the milk until the powder has dissolved. Otherwise you run the risk of a lot of the powder settling at the bottom of the can or churn; and in that case the food inspector is almost sure to take a sample out of the very last pint. These observations are the result of some little experience in milk cases; and I advise all readers to lay them to heart.

The increased use of condensed milk amongst the masses has induced the legislature to insert in the latest Food and Drugs Act (1899) a provision penalising importers who do not observe certain rules. For the greater part of condensed milk is imported into this country from abroad. **Condensed, separated, or skimmed milk** must not be imported into the United Kingdom except in tins or other receptacles which bear a label in large and legible type, "Machine-Skimmed Milk" or "Skimmed Milk," as the case may require.

The same rule applies to **adulterated or impoverished milk and cream**. In these cases the cans or packages are to be marked with a name or description indicating that the milk or cream has been so treated.

"Adulterated" here means what is meant by the popular term "doctored." Any addition to or subtraction from the article is adulteration, except the addition of a harmless preservative. The marking must be conspicuous—it must readily catch the eye.

The person liable is the importer (a word whose meaning is fully explained on p. 1257); and he may be summarily convicted and fined £20 for the first offence, £50 for the second, and £100 for a subsequent offence. In addition, he may be imprisoned, with or without hard labour, for three months.

I ought to add that when samples are taken by the Customs officers on importation, the Customs officers need not pay for the samples as a food inspector must. You see, the offence here is not selling, but importing, goods without a label. When the food inspector wants to prosecute a retailer, as a rule he must first induce him or compel him to sell the suspected article, otherwise there is no sale on which to base a prosecution. But in the case of the Customs officer there is no such necessity; because the basis of the prosecution is the importation of the article into the country.

A rather curious case recently came up to the Courts from Essex. A milk retailer in East Ham had his milk sampled by an inspector. A pint of it was found to contain—fat 3·55 per cent., non-fatty solids 7·46 per cent., water 88·99 per cent. The analyst added, "I am therefore of opinion that this milk contains 10 per cent. of added water." The justices took the certificate and pronounced a Solomonic decision. True, there was 10 per cent. of added water. But then—look at the cream! You didn't often have a milkman charged when he had 3·55 per cent. of cream. So they decided to dismiss the complaint as frivolous, on the ground that "the milk was exceptionally good, the butter fat being above normal." The judges in London promptly sent the case back to them, saying that if the milk had been exceptionally good *after* adulteration, the offence might be too trifling to convict on; but if the milk had only been exceptionally good *before* adulteration, and had had, so to speak, the extra goodness watered out of it, then the offence was not trifling.

In other words, if you have milk above the Board of Agriculture's standard, you must not water it down to standard; because if you are caught at it, you will be fined. The customer is entitled to have the milk as it comes from the cow.

When delivering milk under one order, but in several cans, you should take care that every can is of the proper standard, otherwise you may be fined, although the total milk is up to standard. This applies when you have a big contract with a workhouse, asylum, school, hospital, or other institution where much milk is consumed. As a rule, milk is supplied to a place of this kind on a contract extending over a period of, say, a year. Such a contract was obtained by Mr. Fecitt, who agreed to supply the West Derby workhouse with a daily supply of milk for one year. The contract was for pure, new milk, free from adulteration, yielding seven degrees of cream. The price was eightpence per gallon. The milk was to be tested on each delivery, and if any milk was supplied with less than six degrees of cream a deduction

of one penny per gallon was to be made for every degree short of six degrees. The amount usually required per day was 70 gallons, and Mr. Fecitt commonly delivered it all at one time, but in five cans.

One morning a police-sergeant went up to the workhouse, waited for Fecitt's cart, and brought a sample from each of the five cans. Two of the samples proved to be short of cream—one had from four to five degrees, and the other from five to six. But—and here comes the importance of the case—the other three samples had more than six degrees of cream in them; and, if a sample had been taken out of the whole 70 gallons (that is, by mixing a pint out of each can and then taking a pint from the mixture) there would have been enough cream to satisfy the contract with the Guardians. The authorities took out two summonses against Fecitt, one for each of the two samples deficient in cream. The milk-seller took up this position: "You ought," he said, "to have taken a sample from the whole 70 gallons; because I was selling the whole 70 gallons in bulk to the Guardians. The point is, therefore, whether the 70 gallons, as a whole, contain the proper proportion of cream."

The judges, however, held that although there was only one sale of the whole 70 gallons to the Guardians, yet there were five separate sales to the police-sergeant; and if two of the samples sold were short of cream, there could be a summons for each of them. Fecitt was, therefore, convicted twice. As to taking a sample from the whole bulk, and not from one can, the officer was not bound to do this. He was entitled by law to take a sample from each can if he liked; and the magistrates were not entitled to acquit the milkman merely because the 70 gallons as a whole contained full cream.

Fecitt had another point that he put forward—a point worthy of consideration by **people who accept these big contracts**. He argued that by the contract with the Guardians he was not bound to supply pure milk. The milk was to be tested at each delivery and something knocked off the price if it was short of cream. Therefore the contract itself provided for the offence or mischance of shortness of cream; it was in the contemplation of the purchasers, and therefore they could not be buying the milk "without notice" that it was not in full cream. This plea, however, the Court brushed aside; it had nothing to do with the case, they said. And I think they were right; because the contract was not "You may supply milk with less than six or seven degrees of cream at a cheaper rate"; it was "If your milk is short of cream we shall pay you a shorter price." There is a good deal of difference. It is like the case where a man who sells a business agrees not to set up in the same street in opposition, but if he does so, he shall pay to the purchaser of his old business £5 a day so long as the opposition continues. This does not mean that he may set up in opposition and keep on at it so long as he pays the £5 a day: it means that he must not set up at all; but that if he breaks his contract he must pay so much damages.

Now one of my readers may be a trader in the position of Mr. Fecitt. If he is, I want to tell him not only how he can break the law, but how he can avoid breaking it. The next time the man takes the cans of

milk to the workhouse, see that every can is labelled, "This milk is believed to be pure, but is not warranted to contain all its cream." And if a police-sergeant, or any other person, comes up and asks for a sample, point out to him the notice on the can; or simply say to him when he asks for a pint, "This milk is not warranted to contain all its cream." Then there will not be any prosecution. If there is, you will get off scot-free.

SECTION III

TEA AND COFFEE.

Coffee Act, 1718—Weight-making materials added to coffee—**Tea and coffee Act, 1724**—Does not touch chicory—Mixing tea with drugs—"Faked" leaves—How the law was evaded—**Dyed leaves from China**—Exhausted tea—Tea mixed with foreign substances.

THERE are several Acts of Parliament, or, rather, sections of Acts of Parliament, *left unrepealed* for some reason or other, but practically superseded by the Food and Drugs Acts. These I must touch on, seeing that they are the law of the land; but I shall not weary the reader by any lengthy explanation of laws practically obsolete. They are, however, of some importance to tea and coffee dealers.

The first of these is the Coffee Act of 1718, which is, in fact, a section of a long statute dealing with a hundred-and-one matters of revenue, customs, smuggling, and whatnot. The material part for our purpose (section 23) begins by stating, as the fashion of those days was, how "divers evil-disposed persons have at the Time or soon after the roasting of Coffee, made use of Water, Grease, Butter, or such like Materials, whereby the same is rendered unwholesome, and greatly increased in Weight, to the Prejudice of His Majesty's Revenue, the Health of his Subjects, and the Loss of all honest and fair Dealers in that Commodity." The section then goes on to forbid the use of "Water, Grease, or Butter, or any other Material whatsoever," whether for increasing the weight or "damnifying or prejudicing the said Coffee in its Goodness." And the penalty for disobedience is a fine of £20 for every offence.

The reason why this Act has gone out of use is because the same offence can be dealt with under the Food and Drugs Acts, as selling an article of food which is not of the "nature, substance, and quality of the article demanded." Moreover, in a prosecution under the Coffee Adulteration Act, the prosecutor has to prove guilty knowledge on the part of the seller of the coffee. Under the Food and Drugs Acts the prosecutor need only prove that the coffee was in fact adulterated, leaving the shopkeeper to get out of it if he can.

After the Coffee Adulteration Act of 1718 comes the Tea and Coffee Adulteration Act of 1724. It appears that notwithstanding the statute passed only six years before, the "evil-disposed persons" continued to mix butter, grease (lard is mentioned)—as well as water and other materials—

with their coffee "to the prejudice of the health of His Majesty's subjects" and with other evil consequences. This time the penalty was increased to £100. Every person offending against the statute by mixing with or adding to coffee, butter, lard, grease, water, or other material whatsoever, either in roasting or after roasting, or before selling, is liable to the fine. So also is any trader or dealer in coffee who **knowingly buys or sells coffee** so adulterated.

It should be observed that the adulteration of coffee hit at by these statutes is of a *very limited character*. Adding butter, lard, grease, and water explain themselves. But "other materials whatsoever" would appear only to include other materials of the same kind as butter, lard, grease, or water—that is, grease or fat and liquids. Thus the most common adulteration of coffee known in these days—the addition of chicory—is untouched, and must be dealt with under the Food and Drugs Acts.

The same old statute deals with **the adulteration of tea**. The offence consists of counterfeiting or adulterating tea, or causing either of these things to be done, or "altering, fabricating, or manufacturing tea with 'terra japonica' or with any drug or drugs whatsoever." Mixing other leaves with tea-leaves, and selling the mixture as tea, also comes within the Act. All offenders are rendered liable to a fine of £100 and to forfeit the tea (or mixture) in question. Curiously enough, the adulterated coffee is not made subject to forfeiture.

But the "evil-disposed" ones apparently found means of evading this Act, so far as it related to tea, and brought upon themselves, in 1730 and 1776, two much stronger measures. The ingenious—if hardly ingenuous—dealer in what is now our national beverage had resorted to the practice of "faking" sloe-leaves, leaves of the ash and elder trees, liquorice leaves, and possibly the leaves of other trees, into fair imitations of "chaney tea." And—what was even more cruel—he had taken to the collection of tea-leaves that had already been used. These he dried, dyed, mixed up with his new tea, and sold at a very handsome profit. And he could not be touched; for did anyone accuse him of cheating, he could reply, "Cheating! I was asked for tea, and I sold tea. Second-hand, did you say? Well! but tea nevertheless. A second-hand chair is still a chair; and a second-hand tea-leaf is still a tea-leaf."

Upon the honest gentlemen who resorted to these practices, the two statutes I have mentioned poured out the vials of their indignation. Were they not acting "to the prejudice of the health of His Majesty's subjects, and to the ruin of the fair trader"? Good, honest Parliament! How careful these country gentlemen were of the health of the people! And how unselfish! For probably the country gentlemen of those days touched no more than half a dozen cups of tea in a twelvemonth. There seems to be a peeping-out of the cloven hoof, however, when we see it declared that the nefarious practices of the tea dealers was "to the diminution of the revenue."

The statute of 1730 imposed a penalty of £10 for every pound weight of the dyed or stained or second-hand leaves found in the possession of a dealer

in or seller of tea. I want you to notice this, because it shows how laws can be evaded. It soon occurred to some clever tea dealer that the safest way to adulterate tea would be to get somebody else to make the imitation leaves, instead of manufacturing them on his own premises. If the Excise officer (at that time the man who administered the Adulteration Acts) raided the manufactory of one of the imitation-makers, he was met by the defence, "The Tea Adulteration Act does not apply to me at all. I am not a dealer in or seller of tea. I am a dealer in and seller of sloe-leaves, ash-leaves, elder-leaves—all kinds of leaves except tea-leaves." So that the Exciseman, unable to catch the adulterant element while in course of manufacture, had to try to catch it after it was actually mixed with the tea in the shop of the retailer.

The 1776 Act enabled the Excise officer to apprehend and take before the justices any person having more than six pounds in his possession of sloe, ash, elder, or other leaves. If the person arrested could not prove (*a*) that he got the leaves from trees whose owner had given him leave to take them, and (*b*) that he intended to use them for some other purpose than to make imitation tea, he was to be convicted and fined or sent to prison.

After this, there was not quite so much imitation tea on the market. But the true remedy for the disease was found in the abolition of high duties; and in the increased cultivation of the tea plant in the East. India and Ceylon now produce so much of the delectable leaf that tea is remarkably cheap; and it is doubtful whether it would be possible to produce an imitation article much more cheaply than the genuine one.

In 1875, by the Food and Drugs Act of that year, Parliament endeavoured to stop the adulteration of tea at the fountain-head. The former severe laws had pretty well stopped adulteration of that article in this country; but there still remained the Heathen Chinee. That bland and guileless child of nature, who had at that time the greatest share of the British tea trade, used to adulterate the leaves before he packed them for export. He probably thought anything to be good enough for the "foreign devil"; and so he palmed off upon the unsuspecting British public tons of leaves that had already done duty once—if not more than once. A friend of mine once knew an economical household where the tea-pot was first filled for the lady of the house and her guests. Then it went upstairs to the nursery. Next it descended to the housekeeper's room, where the upper servants took off the third instalment of the leaf's strength; last of all, the tea-leaves were emptied into the big kitchen tea-pot.

I told my friend who spun this yarn that the thrifty housewife aforesaid was only taking a leaf out of the book of certain Chinese tea merchants. These gentlemen habitually saved up the leaves that had already been used once or twice, dried them, dyed them, and otherwise touched them up, and then sold them to English tea merchants—mixed, of course, with a certain quantity of new tea. In the year 1873, under the old Adulteration Act, a man was convicted of selling in this country certain green tea that was adulterated. The stuff sold was tea, and it was green—for the guileless

Chinaman, Wun Lung, who sold it to the English shipper, had taken care not to leave the colour to chance, or to nature; he had "faced" the leaves with gypsum and Prussian blue. And, of course, the man who sold it over here, and was punished for it, had been himself swindled by the wily Wun Lung, and was in no way morally to blame.

If you wish to keep your neighbour's dog from grubbing up your flowers, you will be most successful if you prevent the beast from coming into your garden at all. So, also, if you wish to prevent your British grocer from selling tea "faked" by the Heathen Chinee, you will best accomplish your object by stopping the tea before the grocer receives it. And by section 30 of the Food and Drugs Act, 1875, Parliament has tried that method. Tea is now subject to examination by the officers of Customs at the port of importation. Samples for analysis may be taken by them. If it should be found that any tea thus sampled is **mixed with exhausted tea, or with foreign substances**, it is dealt with according as it does or does not contain anything noxious. If the analyst certifies that the tea is unfit for human food, the Customs people destroy it. If he merely certifies a mixture of tea with harmless foreign substances, or exhausted leaves, the Commissioners of Customs may prevent the delivery of the mixture except on special terms and conditions, whether for home consumption, for export, or for use as ship's stores. "**Exhausted tea**" means, as one would suppose, tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

SECTION IV.

BREAD.

"Corrupt victual"—Bread and ale—The Bread Act—Lawful ingredients of bread—Alum in bread—Master liable—Servant also—Bread to be marked—Obstructing a search—The Sabbatarian butcher—Who may prosecute—Common informer to have half penalty—Servant to blame—How master may escape.

BREAD has always been a subject of anxious thought on the part of the authorities. In the very earliest days the Courts Leet in England used to hold inquiries into "corrupt victual"—especially bread, malt, beer, and butcher's meat. And, it is stated on high authority, the sellers of such victual could be and were punished as for a common nuisance. In an American case, a man who contracted to supply drinking water to a town was punished for nuisance because the water he supplied was unwholesome. And the American Common Law is the English Common Law.

There is an old statute of Henry III., bearing the amusing title, "Of the Pillory and Tumbril and Assize of Bread and Ale." The Law was apt to be grandmotherly in those days, when it did interfere; and the statute ordained that search was to be made in every town, to see how the vintners sold a gallon of wine, or "if any corrupted wine be sold in the town, for such

is not wholesome for man's body." Also if any butcher sold "contagious flesh, or that died of the murrain." Also if any cooks there were who "seethed unwholesome flesh." Or any bakers who made "unwholesome bread."

There used also to be regulations by which power was given to magistrates to fix the price of bread. The Lord Mayor of London, for example, once had autocratic power to say, from time to time, how much a baker should charge for a loaf of bread in the City of London.

We shall, however, concern ourselves here chiefly with the *Bread Act of 1836*, which, by the way, does not extend to Ireland. The *London Bread Act of 1822* is similar in terms to the Act of 1836; but it applies only to the City of London, a radius of ten miles from the Royal Exchange, and the area of the weekly bills of mortality. The Act of 1836 extended the provisions of the London Act to the whole of Great Britain.

It deals with **the lawful ingredients of bread**. Certain materials may be used in the making of the staple food, and no others. These materials are flour or meal of wheat, barley, rye, oats, buckwheat, peas, Indian corn, rice, beans and potatoes, also common salt, pure water, milk, eggs, barm, leaven, and potato or other yeast. These substances may be mixed in any proportions the baker thinks proper.

The distinction between meal and flour is that meal is the substance of edible grain ground or pulverised to fine particles, but not bolted or sifted. Thus it includes the bran. Flour is the substance of such edible grain, ground, and then bolted or sifted so as to remove the bran.

Please do not imagine that because a baker cannot be convicted under *this* statute, he therefore escapes all liability. For example, if you go into a baker's shop and ask for a loaf of wheaten bread, and the baker gives you a loaf partly made of potato, he can be convicted under the Food and Drugs Act of 1875 for not supplying the article demanded. So also if you ask for an oatcake, and receive a cake made partly of oats and partly of rice.

Prosecutions under the Bread Act are not very numerous nowadays. Formerly—that is, before 1875—there used to be a good many, chiefly for putting alum in the bread. If you look at the list of authorised ingredients given above, you will see that alum does not appear. Yet it was a common practice for bakers to put some of it into a baking. I was in a country place not long ago, and two loaves were set before me by my landlady. One was white as the driven snow; the other not a little yellow. "I can't make it out, sir, why they should be so different—I suppose it's in the yeast. But Blank's loaves are always beautiful and white, and Dash's are always discoloured. And I know they both get their flour from the same mill." I promptly ordered the discoloured variety, much to the good lady's amazement.

Alum is put in bread because it bleaches the flour. You may use almost any quality of flour, in fact, and you will still have a white loaf if you put in a little alum. Whether alum, used in small quantities, is injurious to health, is not very clear. I am advised by one medical man that anyone taking an ordinary diet—flesh meat, fresh vegetables, and so on—can suffer a slight quantity of alum in his bread without it affecting his health one way or the

other. It appears that the phosphates of the other food would neutralise the ill-effects of the alum.

Still, it would seem that bread containing alum is adulterated within the meaning of the Food and Drugs Acts, because it is not of the nature, quality, and substance of the article demanded. The customer asks for bread; the shopman serves him with bread containing a foreign ingredient. Therefore, the whole of what is handed over the counter is not bread.

But, says the puzzled reader, what difference in the world does it make whether the aluminated bread comes within one Act or another Act, so long as it is contrary to law? Gentle reader, you shall learn. Under the old Bread Act it is necessary to show guilty knowledge on the part of the seller of the bread. Under the Food and Drugs Acts it is not. So that it comes to this: Under the Bread Act the bread-seller was only convicted if the prosecution could show that *he knew* he was selling aluminated bread. A most difficult thing this, unless there was a traitor in the baker's camp.

Under the Food and Drugs Acts, however, the seller is convicted if the prosecution shows that, in fact, the bread contains alum; unless, that is, the defendant is able to escape in one of the ways I shall presently enlarge upon.

The Bread Act punishes **not only the master baker** who makes or knowingly sells bad bread, **but also the journeyman** or other servants who take a hand in mixing ingredients with the dough other than the ingredients allowed. The penalty is £10, with imprisonment if the fine is not paid. Besides—and here we trace the hand of Jeremy Bentham and his school, the authors of the theory that the punishment should fit the crime—the magistrates were empowered to order the offence to be advertised in a newspaper published or printed in the neighbourhood; the costs of the advertisement to be paid out of the fine. This always seemed to me to be the proper way to deal with rogues of this kind. Advertisement is the very last thing they desire; and probably if every adulterator knew that a conviction would be duly advertised in the press, he would be very loth to put his neck within the noose.

In some countries—France, I believe, is one—the authorities go even a step beyond this. They post up on the door-post of the offending trader a conspicuous placard, couched in terms something like these: "Notice.—On the 25th of February, 1902, Jean Bonhomme, the proprietor of this shop, was convicted of adulterating his bread with alum." You may readily imagine the effect of this on the trade of Jean Bonhomme; also how the other bakers of that neighbourhood, who have not been caught, chuckle with virtue.

I have said that by the Bread Acts, bread may lawfully be made of a mixture of a number of things—peas, potatoes, and beans amongst others. How, then, can anybody be sure that the loaf he buys is made from wheat-flour? for, in England, at all events, when you ask for bread you expect to get wheaten bread. Well, the Bread Act provided for that contingency by ordering that **all bread not made from wheat-flour must be marked** with a large Roman M—signifying "mixed." The baker may use potato yeast, if he likes, without using this mark; but he may not use for the substance of the loaf any meal or flour except wheat-meal or -flour.

The penalty for not marking bread "M" when it ought to be marked is a fine not exceeding 10s. for every pound of unmarked bread made, sold, or exposed for sale. The magistrate may make it less, if he chooses. Here, again, the prosecution must prove the guilty knowledge of the accused.

There are other clauses of the Bread Acts. One empowers magistrates and Justices of the Peace to enter and search any house, mill, shop, stall, and so forth, belonging to any miller, mealman, baker, or seller of bread, flour, etc., to see if there are on the premises any ingredients or mixtures prohibited by the Acts. If they find any such, and are of opinion that it is intended to be used for making bread, they can seize the whole lot. If the substance has been brought on the premises by a dishonest servant, without the master's knowledge, the master is still liable. They can also grant a search warrant to the police to enter and search. The penalty on the baker, miller, etc., in whose place the adulterants are found, is a £10 fine for the first offence, £5 for the second, and £10 for the third and subsequent offences—which can be reduced if the magistrates think fit. Imprisonment in default of payment, as usual. Here, also, the magistrates may give the offender the benefit of a free advertisement in the local press. To obstruct a search under the Acts is itself an offence. If any person convicted under the Bread Acts thinks he has been convicted wrongfully, he may appeal to the next Quarter Sessions of the town or county. Then he will have the benefit of trial by jury.

I ought to say that by "obstructing or hindering" a search for adulterative ingredients is most probably meant physical obstruction—not something merely passive—not merely refusing to help the inspector or official who comes to do the search. There was once a case where a butcher lived half a mile away from his shop, and one day an inspector of nuisances appeared at his dwelling-house and thus delivered himself: "There is a complaint that you have bad meat at your shop; I wish to search the place." "Do you?" said the butcher. "Search away, then." "But the shop is locked," the inspector replied. "It usually is on Sundays," was the answer. (For it was the Sabbath day when the inspector made his demand.) "You must come with the key and open the place for me." But the butcher demurred—he was not going to open his shop on Sunday—he did not see why, on a day when he was required by Act of Parliament to attend the parish church, he should go amongst the joints and carcasses of workaday.

The inspector said, "Very well, then, give your key to one of your servants, or one of your family, and send him down." But again the stout butcher assumed a strictly Sabbatarian attitude—replied that he did not pay his men for Sunday labour—therefore had no call on their services. In short, the man of meat gave the zealous officer to understand that he, the zealous officer, might stand outside until he frizzled; but that under no circumstances would he, the butcher, go or send to open the shop-door.

Whereupon the inspector took out a summons. In it he charged the butcher with "preventing, obstructing, or impeding" the search for a nuisance—to wit, unsound meat. And the case went up to the higher tribunal in

London after the local magistrates had finished with it. And the judges held that the butcher had not "prevented," neither had he "obstructed" nor "impeded" the search. The words of this Act (Nuisance Removal Act, 1863) are very like those in the Bread Act, which are "obstruct or hinder." So that the decision may be taken to cover bakers as well as butchers.

Now if the butcher had lived over his shop, as used to be the custom of all tradesmen—and merchants and manufacturers also, for that matter; and if the inspector had come there, saying, "Let me in to search," and the butcher had said "No!"—standing in the doorway the while—I think the butcher would have been found guilty. Because if a man wants to come into your house, and you stand in the doorway and block it up, clearly you obstruct him; you also prevent him and hinder him. But if he meets you a mile away and says, "Come to your house and let me in," and you reply (as you probably would), "I'll see you hanged first," you can hardly be said to have obstructed, or prevented, or hindered him from entering your place. You merely refuse to assist him, which is quite another thing. (Obstruction under Food and Drugs Acts, *see* p. 1186.)

Forceible opposition or resistance to a search under the Bread Acts, or any other such opposition or resistance to a person engaged in executing the statute, is punishable by a fine of not more than £10—less if the magistrate thinks fit. The Irish Bread Act fixes £5 as the maximum penalty—maybe because of the greater poverty of the country. Anyhow, it is cheaper to resist a bread inspector in Ireland than in Great Britain.

Fines may be enforced in the usual way in which fines are enforced in this country—by distress; in plain English, by selling up your goods. The costs of the summons may also be recovered in the same way. And if the goods are not enough to pay the fine and costs, you may be sent to prison for a month, with or without hard labour. In the City of London, which has an Act of its own, you cannot be sentenced to hard labour.

I ought to add, for the information of my Scottish readers, that **IN SCOTLAND**, all penalties incurred under the Act are to be paid to the poor of the place where the penalties are awarded. But the judge trying the case may order that there shall first be deducted a sum to reimburse the prosecutor the expense he has been put to, and also such remuneration for his trouble as the judge thinks right.

Who may prosecute under the Bread Acts? The answer is, Anybody. It is not left in the hands of the police or the food and drugs inspector, though these usually prosecute. If you, a private citizen, know of an offence having been committed, you yourself can take the matter up; and are as much entitled to be heard to complain as if you occupied some official capacity. I have heard—I cannot vouch for it myself, because I have never come across it—that in some places certain Master Bakers' Associations do espouse the cause of pure bread and prosecute offenders.

So that, if you know of a baker who makes and sells or offers for sale or delivers to his customers bread containing ingredients other than those specified on p. 1285, you can prosecute him. If you know of any person

who adulterates corn, meal, or flour by putting in anything at all except the genuine produce of the grain or corn; or if you know any person who sells or offers for sale any such adulterated stuff, you can prosecute. Also if you know anyone who sells bread without the mark "M" when it ought to be marked (p. 1286), you can prosecute. If you know any miller, baker, or mealman who has the adulterated stuff on his premises, you can prosecute.

And how? Well, you must go before a magistrate to tell your tale, which the magistrate may hear privately—that is, not necessarily in a public court. You will be required to swear to the truth of the tale, which will be put into writing and signed by you in the presence of the justice, and is then called "an information." A summons is then served by a police officer on the alleged offender, who is required to attend the magistrate's court on such a day. You can have summoned any witnesses you like. And so it is well to say to the justices' clerk, "So-and-so, of 180, Block Street, shoemaker, can give important evidence. I desire him to be summoned." On the day appointed you turn up at the court, give your evidence, call any witnesses you have, cross-examine the accused's witnesses, and try to prove the charge you swore to before. *If you fail*, you will probably have to pay the legal expenses of the man you have wrongfully accused. The J.P. can order you to pay them down on the spot, or by instalments, or all on a certain day. If you are a poor man you should ask his worship to give you time in which to pay. Whether he accedes to your request or not will largely depend on the view he takes as to the *bonâ fides* of the charge you made. Also on the state of his digestion. If you do not pay, your goods may be seized and sold.

If you prosecute successfully, and convict your man of the offence, you are **entitled to half** the penalty imposed; and the magistrate may—not must, but may—order the culprit to pay your legal expenses. It was a common practice in bygone years, in order to encourage the detection of offenders, to enact that a successful "common informer" should take half of any fine imposed.

Once Parliament made rather a mess of it. A Bill was brought in whereby it was proposed to impose a fine upon certain offenders; and that half the penalty should go to the informer. But the Bill was amended in its passage through the House of Commons, and instead of a fine, six months' imprisonment was made the penalty. They forgot, however, to strike out the clause awarding half the penalty to the informer. So that this gentleman became entitled to three months' imprisonment if he prosecuted an offender to conviction. I never heard of a common informer informing against anybody under this sapient statute!

I have already said that if you are not successful you may find yourself ordered by the magistrate to pay the costs of the man you have accused. "A word to the wise is enough." But as possibly some person who buys this volume may lend it to someone who is not wise, let me explain that I mean by this—do not prosecute. If you find a dishonest person who

ought to be proceeded against under the Bread Acts, go to the local sanitary authority—the Medical Officer of Health will do, and try to get the public authorities to take action. There is no particular reason why you should become a “common informer,” and run the risks of having to pay costs.

If you are prosecuted, you will act wisely by engaging the services of a solicitor (or writer), being careful to go to one who makes it his business to conduct cases in the police courts and before other inferior tribunals. He will conduct your case far better than you could conduct it yourself; even if, in other matters, you are a cleverer man than he. Do not forget to tell him all the facts, as far as you know them. Some people think it advisable to conceal things from their lawyer; and the result is that the unfortunate advocate, who has worked up his case on the facts as told him by his client—has mapped out a route, so to speak—finds himself confronted by an obstacle suddenly thrown in his path by the enemy. The obstacle is some fact that he cannot possibly controvert, and it is all the more damaging because it is suddenly sprung on him. Then when the case is over, and the client has been duly convicted, the lawyer soothes him by saying, “Why in the world did you not tell me so-and-so? If I’d known that fact beforehand I could have met it. As it was, you have simply given yourself away.” Herein I speak feelingly, for clients of mine have tried to run me in blinkers before now—to my great annoyance.

There is a method by which a master baker (miller, etc.) who has been convicted of an offence under the Bread Act, can procure the **punishment of a servant whose fault it is**. Suppose you, Mr. Kruste, have two shops: one at Colchester and one at Coggeshall. The one you manage yourself; the other is managed for you by a foreman, whom we will call Twist. The said Twist has to account to you every week for the takings, you supplying him with raw material. You go to Coggeshall every Monday, when Twist gives you an account, something like this:

“Received during the week ending March 10th, 1902:

10 sacks biscuit flour;

20 sacks best seconds;

So much yeast;” and so on, and so on.

Then he hands you over a sum of money. You look to see how much flour is left—say there is half a sack. Well, you, being a practical man, know exactly how much bread ought to have been made out of the twenty-nine and a half sacks consumed. You count the money and find it correct. Little do you know that Twist, whom you trusted absolutely, has been mixing potatoes and other things with your flour. For every loaf accounted for there is half a loaf not accounted for. Twist, for filthy lucre, has robbed you as well as the public.

One fine day a food inspector drops on the bread-barrow at Coggeshall. He buys a loaf—a loaf not marked “M.” It is found to contain potatoes. Then you are summoned and fined. You pay; and leave the court with vengeance in your heart. You want to know if you can give Twist a

dose of something unpleasant. Yes, you can. You can go to the magistrates—apply then and there if you like ; take the oath ; swear that Twist has done the adulteration without any knowledge or connivance on your part, and ask the magistrates to issue a warrant to arrest the unprofitable servant. The warrant being granted, and Twist duly apprehended and brought up for trial, you must prove that you have had to pay a fine (and costs) by reason of the wilful act, neglect, or default of Twist, who was your “journeyman or servant.” The magistrates may, if satisfied that the charge is proven, order Twist to pay you a sum by way of recompense. And if Twist is ordered to pay, he had better pay quickly ; for if he does not “make immediate payment,” he may be sent to prison with hard labour for not more than one month nor less than ten days—unless, indeed, he contrives to pay the money before his sentence has run, in which case he may pay and be released at once. In the CITY OF LONDON, the unfaithful servant, if he does not pay what he is ordered to pay, may be sent to Pentonville or Holloway for any term not exceeding six months—a punishment six times as severe as the punishment in the rest of the country.

CHAPTER III.

THE SALE AND SEIZURE OF UNSOUND FOOD.

Sanitary Districts—IN ENGLAND—Urban and Rural—Rural with urban powers—IN SCOTLAND—Burghs—Districts outside burghs—Veterinary surgeon to assist in Scotland—Also Police Force by searching—Animals and food to be examined—Power of officer to enter premises—Power in Scotland to search carts, etc.—WHAT MAY BE SEIZED—In England (except London)—Thirteen articles—In some districts all articles—London and Scotland—Must be intended for human consumption—Obstructing officer—Not assisting is not obstructing—Local bye-laws—The smell of cheese—WHEN MAY FOOD BE SEIZED?—Exposed for sale—Deposited for sale—Deposited for preparation for sale—Intended for food of man—In course of transmission (Scotland)—Meaning of "exposed for sale"—Meaning of "deposited in any place"—What is a place?—Case of the Derby butcher—Foodstuffs presumed meant for food—But defendant may prove contrary—Permissible to poison foreigners—PROPER METHOD OF PROCEDURE—Inspection and examination—Seizure—Condemnation by justice—Owner need not be notified—Owner may resist condemnation before magistrate—Magistrate need not hear owner—May if he likes—Time for condemnation—Compensation for wrongful seizure—How to get it—How much—PROSECUTIONS—Conviction not necessary consequence of seizure—Who may be summoned—Guilty in London, not guilty in provinces—Owner at time of exposure for sale—Meaning of "owner"—The man in possession of the stuff—Possession of servant is possession of master—What is not possession—Food seized when not exposed for sale—Pickled beef—Salesman on commission—Law applicable to London—Walnuts case—Liability of wholesaler and retailer—Scotch law between wholesaler and retailer—Power of sanitary officer to break open premises—DEFENCES—Knowledge of condition of food—No defence in England—Notice in shop—Special defence for London—Defence that food was sound though condemned—In Scotland, defender's want of knowledge or defence—Veterinary's certificate on beast or meat—Peculiar Scotch procedure—How certificate to be given—PROCEEDING AND PENALTIES—For obstructing—For the principal offence—Posting up convictions in Scotland and London—How much rottenness in a basket of plums.

THE law relating to the seizure of unsound food is in a very muddled-headed condition. It is dealt with by various Acts of Parliament called Public Health Acts; and Parliament has apparently done its best to make the law as difficult to get at and as unsatisfactory in the working as possible. One would have thought it an easy enough matter to draft one measure dealing with the subject—a measure that should apply to the whole of the United Kingdom. There would, of course, be variations as to procedure in Scotland; but there need have been none as to the law itself—the thing commanded to be done or to be avoided. It is preposterous that in England alone a man should be under one law if he is in London, another if he is in an Urban Sanitary District outside London, and yet a third if he is in a Rural Sanitary District. Stay! I had forgotten. The poor wretch may be under one law in one Rural Sanitary District, and if he removes his business half a mile into another Rural Sanitary District find that what was lawful—

or, at least, not punishable—there is unlawful and punishable here. In some places the inspector of nuisances may seize any unwholesome article, in other places he may only lay hands on certain kinds of unwholesome articles. What the places are, and what the articles, is my first business to explain.

In England there are two kinds of sanitary authorities, Rural and Urban. One is the sort of authority found in country places of small population—the other is found in bigger places. All municipal boroughs are Urban Sanitary Districts; so also are very many populous places which have not yet aspired to the dignity of a Mayor, Aldermen, and Town Councillors.

Urban Sanitary Authorities are: in a borough (which includes every incorporated town and city), the Mayor, Aldermen, and Town Council; in an urban district not a corporate borough, the Urban District Council. All places not within the boundaries of a borough or urban district are Rural Districts, and the sanitary authority there is the Rural District Council. But it should be observed that the Local Government Board can confer on a Rural District Council what are called *Urban powers*—that is, give to the Rural the same powers as are exercised by an Urban District Council. There has been a good deal of in-and-out legislation in the matter of local government during the last quarter of a century—a good deal too much of legislation in scraps, until Town Clerks, Clerks to District, Parish and County Councils sometimes hardly know whether they are really awake or in the throes of nightmare as they contemplate the Public Health Act, the Public Health (Water) Act, the Public Health (Interments) Act, the Public Health (Fruit-pickers' Lodgings) Act, the Public Health (Support of Sewers) Amendment Act, the Public Health (Confirmation of Bye-Laws) Act, the Public Health (Ships) Act, the Local Government Act, 1888, the Public Health Act, 1889—but I will refrain. When I tell you that every new statute refers back to one or more of the statutes preceding it—alters a word in a section here, cuts out part of a sentence there, you will pity the poor Town Clerk. I remember how my head swam the first time I advised in a Local Government case. Luckily, with one slight exception, the Powers that be have not tinkered with the original legislation on the subject of eatable food.

IN SCOTLAND you also have different authorities. In burghs, the Town Council, or Burgh Commissioners, or Board of Police. In counties which are “districts,” having a District Committee, then the District Committee. In counties not so divided, the County Council. I refer to these authorities as “the local authority,” which is equal to the English “Sanitary Authority.” I shall sometimes use the term “local authority” as meaning “Sanitary Authority” (in English references) as well as the Scottish local authority.

Now it is by the local authorities that the Acts as to Public Health have to be enforced—it is their duty to detect offenders and bring them to justice. It is their duty to cause unwholesome provisions to be destroyed, or prevented from being used for the food of man. And they must act according to the rules laid down by the statutes, doing everything decently and in order. The duty of actually detecting offences and offenders is con-

fined to certain officers, to be appointed by the local authority ; and, in this respect, I think the Scotch Public Health Act (1897) a great improvement on the English Act (1875), or even on the London Act (1891).

IN ENGLAND the task of seizing and destroying unwholesome food is to be put into the hands of (1) the Medical Officer of Health (referred to as M.O.H.), and (2) Inspectors of Nuisances. **IN LONDON** it is the same, except that the inspectors are called "Sanitary Inspectors." **IN SCOTLAND**, however, the local authorities can appoint, in addition to the M.O.H. and sanitary inspectors, a veterinary surgeon, who must be a member of the Royal College of Veterinary Surgeons (M.R.C.V.S.). I wonder this has not been done in England too. Its advantages in cases where diseased animals and butcher's meat have to be dealt with are obvious. For the M.O.H. must be a medical practitioner ; and the inspectors are not necessarily skilled men. They are instructed in a few rough-and-ready tests for disease and unsoundness, and that is all. Moreover, it is provided, in the Scotch Act, that an inspector or M.O.H. cannot seize as diseased or unfit for food any living animal unless he is accompanied by a veterinary surgeon approved by the local authority—unless (which rarely happens) the inspector or M.O.H. is himself a veterinary surgeon. In Scotland, also, the *Police Force* of each police area may search carts, vehicles, barrows, baskets, sacks, bags, or parcels ; and have powers generally to assist in detecting unsound food and having it condemned.

Over the whole of Great Britain the M.O.H., inspectors, and (in Scotland) authorised veterinary surgeons may at all reasonable times **inspect and examine animals and articles of food** (as to limit on kinds of articles of food in some places, *see pp. 1294-5*). Curiously enough, the English Act does not say that the inspector, etc., may enter other people's premises to do so ; but it punishes anyone who obstructs him when he wants to enter premises. The London Act does not say he may enter premises, either. These Acts simply say he may inspect and examine articles of food. The Scotch Act, however, says he may enter premises for the purpose, and also may search any cart or vehicle, barrow, basket, sack, bag, or parcel, in order to inspect and examine. I really do not know that there is very much difference here. I think in England an inspector may enter, if he can, any place where he thinks an article of food is deposited for sale, or for preparation for sale, or is exposed for sale ; nor would he be obliged to leave if the proprietor ordered him to go. In Scotland it amounts to the same thing.

We have arrived, then, at an answer to the question, Who may seize? We now want an answer to the inquiry,

WHAT MAY BE SEIZED ?

This differs in various places. Leaving out London (which term includes the City and all the newly created London boroughs), we find that over the whole of England inspectors of nuisances and medical officers of health are given power to **examine and seize (if unwholesome) thirteen varieties**

of human foodstuffs. These are, in alphabetical order, placed in a column for the purpose of convenience, any

1. **ANIMAL.** This means the live animal.
2. **BREAD.** No matter from what kind of flour made.
3. **CARCASE.** This means a whole carcase.
4. **CORN.** Unground—would include every kind of grain.
5. **FISH.** Including fish in tins (such as sardines).
6. **FLESH.** This probably means the same thing as Meat (10).
7. **FLOUR.** I should say meal would not be included.
8. **FRUIT.** In the limited sense—not in the large sense of “fruits of the earth,” which would include vegetables.
9. **GAME.** I never heard of any seizures of game merely “high,” though it would come within the Act, I think.
10. **MEAT.** Means joints of butcher’s meat—same as Flesh—except, perhaps, that this includes potted and canned meats.
11. **MILK.** Including condensed milk.
12. **POULTRY.**
13. **VEGETABLES.**

When one first looks at this list it seems as though it included all food-stuffs of whatsoever description. But a little inspection shows that it does not. The rotten egg is not there; nor the weevilly biscuit; nor the deleterious condiment; nor jam; nor the sweetmeat of childhood; nor the ice-cream which, swarming with deadly bacilli, is vended by a swarthy son of Italy from a hand-barrow, to the increase of his own wealth and the serious danger of his juvenile customers. Many other things eaten by the people of these islands are also excluded—I have no idea on what principle. I fancy the draughtsman of the Act thought he had remembered everything. Probably he soon discovered that he had not. Why in the world he bothered his head, when he could have included everything by saying, “all things and articles intended for the food of man,” I do not pretend to know.

Suffice it here to say that all the things specified in the list of the thirteen articles can be dealt with by medical officers of health and by inspectors of nuisances all over the country.

Now the statute in which that list is enumerated is the Public Health Act, 1875. And in 1890 Parliament added a little Act called the “Public Health Amendment Act,” a good instance of the way our Parliament legislates. It made it optional for any sanitary authority, rural or urban, to adopt for its own district a provision that the law as to seizure, etc., of unwholesome food, should extend to **all articles intended for the food of man.** Wherefore, dearly beloved reader, when I am supposed to be telling you what the law is of which *you* must stand in awe, I am obliged to ask you whether you live in a sanitary district whose local authority has adopted the new law, or not. What a farce it is! Either local authorities ought to have the power and the duty to deal with all unwholesome food, or they

ought not. If they ought, then all of them ought; if they ought not, then none of them ought. I confess I do not understand local option in public health.

The curious part of it is that the option **does not extend to LONDON or SCOTLAND**. The mere Cockney, perhaps, or the Scot, was not to be entrusted with the power of saying whether he would allow murderous ice-cream and deadly eggs to be vended without let or hindrance. At all events, he was not given the chance to do so; and the result is that **in the City and in all the London boroughs, and all over Scotland**, there are brought within the clutches of the law (a) any animal, (b) any article, whether solid or liquid, intended for the food of man. This was by the Public Health (London) Act, 1891, and the Public Health (Scotland) Act, 1897.

Thus, you see, we must look out where we live. If we live in

(1) *London or Scotland*—London includes the City or a new borough—we live within the radius of the law that seizes any animal or any article intended for the food of man. If we live under

(2) *A sanitary authority that has adopted the Act of 1890*, we have also to reckon with a law that touches any animal or article intended for the food of man. But if we live under

(3) *A sanitary authority that has not adopted the Act of 1890*, we have to regard only the thirteen articles as coming within the scope of the law I am about to write of.

When I write, in the remainder of this chapter, "articles of food," I mean an article which is either one of the thirteen, or any article whether of the thirteen or otherwise, according as you live in one of the places where "any article" is within scope of the law, or not. Now the law is that the medical officer of health, or any inspector, or (in Scotland) a "vet.," appointed by the local authority for the district, may at all reasonable times **examine and inspect** any article of food intended for human consumption, to see whether it is sound or not. That is the first step. The London Act says he may "enter any premises and inspect and examine." The Act applicable to the rest of England misses out the words "enter any premises." I do not know why this difference in language, for in my opinion it means the same thing. For though the General Act does not, in so many words, say that the M.O.H. or inspector may "enter any premises," it punishes, by a later section, any person who prevents him from "entering any premises." I should say, therefore, that the provincial inspector of nuisances has by implication the same power that a London sanitary inspector has of going anywhere where he thinks unsound food likely to be. (As to inspection and seizure of a live animal in SCOTLAND, see p. 1294.)

While I am on this point, however, I would point out that the General Act and the London Act are not quite the same in the point of **obstructing an inspector or M.O.H., or M.R.C.V.S.** The General Act merely says that any person who prevents such an official from entering premises in performance of his duty, or obstructs or impedes him in the carrying out of the Act, is liable to be fined £5. The London Act, on the other hand,

only punishes any "person who obstructs an officer in the performance of his duty" under any *warrant granted by a justice for entry*. This is a difference as well as a distinction. I shall, later, go into the question of warrants; but I want you to see the difference between the Londoner and the provincial. The provincial can be fined for obstructing, impeding, or preventing the M.O.H. or inspector who has no warrant for entry. The Londoner can ask him to show his warrant; and if he has not got one, to prevent him entering is not obstruction. On the other hand, the Londoner is liable to the heavier penalty. (I shall deal with penalties for offences all together, at the end of the chapter.) In Scotland, a person obstructing the M.O.H., inspector, or vet., where the sheriff is satisfied that it was to prevent the discovery of an offence, or that he has obstructed before during the previous twelve months, may be imprisoned for one month. On a mere obstruction, however, not necessarily to prevent discovery, he can only be fined £5. To refuse to assist, however, is not necessarily to obstruct (*vide* the case of the Sabbatarian butcher in the last chapter, p. 1287).

In addition to the Acts themselves, you have to take into account the **bye-laws** of some Corporations and local Acts of Parliament—*e.g.* the Glasgow Police Act. It has been held that, notwithstanding the fact that only the thirteen articles are specifically mentioned in the Act of 1875, a municipal Corporation can, by making a bye-law, authorise the seizure and destruction of any unwholesome victuals unfit for the food of man; and can punish the person in whose possession such victuals are found. This comes within the Corporation's power, conferred by the Municipal Corporations Acts, to make bye-laws for the suppression of nuisances.

The question was brought to a head many years ago in the borough of Doncaster, where Michael Shillito had a shop. Michael had certain cheese, of such a character that when John Thompson, inspector of nuisances, was walking down the street, the odour thereof smote him in the face. Following his nose, John Thompson was led to the shop of Michael Shillito, or rather to a passage adjoining the shop. There he found the *fons et origo mali*, 10 stone 1 lb. of it, in such a state that he might, as Charles Lamb once offered to do, have tied a piece of string to it and led it home.

Then he summoned Shillito under the Corporation bye-law, which said that "if any butcher, or dealer in meat, or any fishmonger, poulterer, or other person shall expose or offer for sale in or upon his shop . . . or any part of his premises, or otherwise, any unsound, putrid, or unwholesome meat . . . or other victuals or provisions unfit for food of man, or which would be deleterious to the health of persons who might feed thereon," an inspector of nuisances might do what John Thompson had done—to wit, seize the "victuals or provisions," have their condition adjudicated upon by justices; and, if found bad, destroy them. In addition to which the person in whose possession the food was found might be fined.

The Doncaster justices condemned two of Shillito's cheeses, much to his disgust, for he said they were quite fit to be eaten; there are some people who like cheese when it can proceed to the dining-room without being carried.

Evidently, however, the Doncaster justices did not appreciate the virtues of locomotive cheese; and they convicted Shillito, and fined him ten shillings. You know how dour and dogged these north-countrymen are. "Only a matter o' five pahnd, Mr. Loryer," said one of them to me once when I told him not to go to law about some unimportant trifle. "Only five pahnd! Ah dōan't care if it's only five pence. Ah'm not bahn to be bested be yon —!" And go to law he did, and the other man too; and they fought before various Courts for two years and more. And when the case was over, one of them—the winner—went up to the other and offered his hand and said, "Coom ahtside, and I'll gi' thee t' best dinner tha iver had i' thi life." The loser went. Another time I managed to avert a terrific lawsuit over a question of a few shillings by suggesting that the parties should toss up for it, and the winner should pay for a dinner for the other man; which appealed to their sporting instincts and their love of good cheer at the same time, and they allowed themselves to be guided by counsel's opinion.

Now although Michael Shillito had only been fined ten shillings and lost two cheeses, he must needs appeal; and the ground of his appeal was that the Corporation bye-law was bad—that, in fact, the Corporation had no power to make such a bye-law. It was not a bye-law, he said, but a new law. Their general power to deal with nuisances did not extend to unwholesome food, but to things affecting the general comfort of the town—such as smoking factory chimneys. Sir (then Mr.) Frank Lockwood argued at great length and with much ingenuity for Shillito; but the High Court judges would not have it. They held the bye-law to be good and valid, and confirmed the conviction.

Besides the Corporation bye-laws, **some markets and fairs** in the United Kingdom have adopted the Markets and Fairs Clauses Act. In such cases, the proprietors of the market or fair can appoint inspectors, who may seize unwholesome provisions and treat them as sanitary inspectors may under the Public Health Acts; they may also visit slaughterhouses within the fair or market, and seize either live or dead meat and take it before a J.P. In such cases, also, anyone who sells unwholesome provisions at the market or fair may be summoned and fined £5.

After all, however, the most important Acts are the Public Health Acts, because they apply all round. Now it is very important to note that the only time **when the inspector or M.O.H. is entitled to seize** under the Public Health Acts (London included) is when the article of food in question is

- (a) Exposed for sale;
- or (b) Deposited in any place for the purpose of sale or of preparation for sale.
- or in Scotland (c) In course of transmission for the purpose of sale or of preparation for sale. And, in addition, the article of food in question must have been
- (d) Intended for the food of man.

Let me take these things in their order. (a) If the reader turns to the adulteration chapter he will find, on p. 1255, decisions given there as to the meaning of "**exposed for sale.**" It is always dangerous to apply to one Act of Parliament decisions given on another Act, though the words under consideration may be identical. You see, the context is generally different; and you must always consider words with reference to their context. Still, in my opinion the expression "exposed for sale" means, in this section of the Public Health Act, exactly what it means in the Margarine Act. "Exposed for sale" means, *on view* to the public—to customers, that is—not necessarily the article itself exposed to sight, but either the article or the wrapper, package, etc., in which it is contained. Thus, if you have flour in a box with the lid on, but the box is visible to people in the shop, you are properly said to have the flour exposed for sale. But if the box is under the counter or behind a screen, so that people in the shop cannot see it, the flour is not "exposed for sale." (See as to margarine, p. 1255)

(b) The next point requires handling at rather greater length. What do you mean by "**deposited in any place**"? The word "deposited" evidently means "being"—so that the expression might well be "being in any place." But what is "any place"? The word "place" has been the subject of a great deal of legal argument at one time and another. One remembers certain betting prosecutions where a number of judges spent a lot of time and expended much ingenuity also in trying to find out what was "a place within the meaning of the Act." In its literal and proper meaning, "place" would mean anywhere—a spot at the bottom of the sea would be a place. If a man went to the middle of the Sahara desert you would call it a place. The Courts decided in the betting cases, however, that a certain racecourse was not a place—with this qualification, "within the meaning of the Act." But that Act was not the Public Health Act. That decision on the word "place" was arrived at by considering the words of a particular statute, and it was decided that "place"—a general word—was there limited by previous words. Thus, if you say, in an Act of Parliament, "shop or any other place," you mean a place of the same kind as a shop—you might mean, for example, a bazaar or a stall in a market; but you would not include St. Paul's Cathedral or the Lyceum Theatre.

I wish you to note, however, that the Public Health Acts have no qualification at all. "Any place" means *any* place, just as it says. A Derby butcher once made an attempt to limit the operation of the statutes by contending that "place" meant "building," because in another section of the 1875 Act it is said that a magistrate may grant a search warrant to an inspector to enter a building in which he suspects rotten foodstuffs to be. Let us see what happened to the Derby butcher.

One day Policeman X, of the Derby Borough Force, was on the watch near the house of Mr. Young, a butcher, who had his shop in the town. The house, however, was not in the heart of the town, but in a suburb. Not that the house was altogether and nothing more than a retreat for Mr. Young in his dignified ease, for there was a good bit of land—a big yard—thereunto

adjacent, on which Mr. Young had built a slaughterhouse. He also had pigstyes, in which he probably kept pigs, because across the yard from the slaughterhouse was a huge copper, wherein the worthy butcher was in the habit of boiling offal for his live-stock. As Policeman X kept watch, tired but vigilant, there drove into the yard a cart. In that cart was something; but the lynx eyes of Policeman X could not discover what. It might have been the butcher himself, or a cartload of furniture, or anything else, in fact, as far as X knew. Whatever it was, it was covered neatly with nice clean straw—tucked-up, in fact.

Now, by a curious coincidence, Policeman Y was keeping his eyes open a little way down the road, in the same neighbourhood. And he also saw a cart—said cart containing something also neatly covered with nice clean straw, and also driven by a servant of Young, the butcher. When Policeman Y first saw the vehicle it was making straight for the butcher's house; but when the driver saw the majestic and awful form of Policeman Y he turned up a side road. If he thought by that to "elude observation" (policemen always say those words in the witness-box: "He tried, your Washup, to elude observation"), the aforesaid driver had greatly underrated the sagacity and the vigilance of the Derby Force; for, behold, though he drove by a "circuitous route" (that is another policeman's catch-phrase), he was distinctly observed by the two eyes of Policeman X to enter the same yard, with cart and something covered neatly with straw, as the first driver had done.

Policeman Y joined Policeman X. "The time has come," said they. "I will watch here—you go and fetch Gattridge." Now Gattridge was an inspector of nuisances for Derby. Soon the inspector came up, and, as the Act directs, did then and there enter the premises of that butcher—X and Y accompanying him, with eyes and ears wide open. How the butcherman must have shivered in the boots of him you may imagine when I tell you that the nice clean straw had been stripped off, the things had been taken out of the carts, and there they lay in the yard exposed to view—two carcasses of two cows.

Further, as the Act directs, Inspector Gattridge touched and otherwise examined the cows. He found them but lately deceased—being warm still. He also found that they would have died if they had not been killed, for they were reeking with pleuro-pneumonia. Then did Inspector Gattridge seize and carry away the carcasses, and hale them before a justice of the peace. Handkerchief to nose, the member of the quorum condemned the pair of them—a rather superfluous sort of proceeding, for they were self-condemned. They were promptly destroyed, and the butcher as promptly summoned. That worthy took up the line of defence you would expect him to take up. He averred that the beef (ugh!) was for his pigs. In proof whereof he said—which was true—that the carcasses were lying in the yard nearer to the copper than to the slaughterhouse. Therefore, he said, "I did not intend them for the food of man." Unfortunately for the guileless Young, however, he failed to prove that his pigstyes had any pigs in them. They may have had, since it was not proved to the contrary. But the burden of proving the fact in his own excuse or defence was on Young's shoulders; and the justices had

no proof that there were any pigs for whose consumption the meat could be. Then Young had to face the awkward fact that his servant, the driver of number two cart, had tried to "elude observation." Also that there had been so much nice clean straw concealing the carcasses from view. On these facts, combined with the other fact that Young was a butcher, the justices convicted the gentleman, to the tune of one calendar month's imprisonment.

But before they convicted him, the butcher raised a point of law. "Admitted," said he "that the carcasses were seized in my yard, I say my yard was not a 'place' within the meaning of the Act." "Place," he said, meant "building." The justices sent the matter up for the opinion of the High Court; and Justices Lush, Hannen, and Hayes decided it. It did not take them very long. They said "any place" meant any place. There were no other words to limit the natural, grammatical sense of the words. A yard was clearly a place, in the ordinary sense of the term; therefore the seizure and inspection there were right and proper, and Young would have to live in retirement for a month.

Had this occurrence happened IN SCOTLAND, I take it the capture would have been made differently. For there (a) the police can search any cart or vehicle, and (b) food can be seized in the course of transmission. For example, if this had happened in Glasgow—a Glasgow policeman had been on the look-out for a time, and had seen the cart coming along, he would have stopped the cart and searched it. In England, the police have no such power. Next, the Glasgow policeman would very promptly have sent for a sanitary inspector to come and take the carcasses away. In England, before the meat could be inspected it had to be "deposited in a place." When a piece of meat is being moved in a cart, I do not think that you can say it is "deposited in a place." The word "deposited" seems to indicate a state of rest. The Scotch Act has cured this by the proviso that goods can be seized in course of transmission. Of course, they must be in course of transmission for purpose of sale or preparation for sale.

The defence set up by the Derby butcher brings us to the next point, (c) **That the food in question must be intended for the food of man.** In pursuance of a settled policy, carried out in the whole of the statutes relating to food, Parliament has cast on the defendant—that is, the person whose goods are seized—the task of proving a negative. In this case, I will show you how it works out. In the slaughterhouse of a butcher, or the premises of a sausage-maker, a nuisance inspector finds the diseased carcass of an ox or a pig. He is justified in believing that the carcass is there with the intention of its being sold for the food of man. Why? Because ox and pig respectively *are* used for the food of man. Because, also, butchers and sausage-makers make a business of selling ox and pig for the food of man. But it may turn out, it is faintly possible, that the beast was not there for that purpose. Maybe the butcher or the sausage-maker intended the carcass to be boiled down for the pigs.

If that be the case, let the butcher or the sausage-maker prove that the **ox or pig** was not intended to be used for the food of man. He will be

acquitted. But let me warn my readers who deal in provisions of all sorts, that a mere statement, "I never intended to sell it to be used as food for man," will not carry them very far in a prosecution under the Public Health Acts. The magistrates will want rather more than that. They will want to know the purpose for which the carcase was intended, and if you do not prove to their complete satisfaction that you intended it for something else, you will probably see the inside of the gaol. The case of the Derby butcher is a case in point.

I do not know that it has ever been decided, but it is in the opinion of many lawyers that "intended for the food of man" means "intended for home consumption," as distinguished from **foreign consumption**. In other words, that you can doctor any kind of putrid food in this country, provided you intend to palm it off on the guileless foreigner, and not on your fellow-countrymen. I do not know whether the point has ever been tested before benches of magistrates. It has not been tested, I believe, before any of the Superior Courts in these Islands. I should have thought "food of man" meant food of man; and I have always understood, as a biological, physiological, and theological fact, that every foreigner, however foreign he might be, and whatever the colour of his skin, is a man at least. For "man" means human being. I can understand the argument that a Briton can only be punished here for an offence committed here, and not for an offence committed abroad. But the offence in this kind of case is having the thing in your possession intending it to be used for human food. And it seems to me that if that offence is committed at home, it does not matter a rap where it is intended the putridity shall be consumed.

Clearly, however, the Act does not apply to one who has "in any place" decayed, unwholesome, or putrid stuff, even if that stuff is of a kind usually eaten as food, if he has got it for some other purpose. For example, if a man has a whole stock of putrid carcasses of oxen, sheep, and the like on his premises for the purpose of making them into manure, nothing can be said against him. Nor would it be fair, if you found in a butcher's shop, thrown on what was obviously the rubbish heap, an unsound side of beef, to conclude that the butcher intended it to be used as the food of man.

Having seen, now, to what articles of food the Public Health Acts apply, let us examine and see what is

THE PROPER METHOD OF PROCEDURE

in cases where the inspector of nuisances or M.O.H. takes action. The first thing he must do is to **inspect and examine** the suspected animal, carcase, or article. If he does not, he at one time could not seize or take court proceedings. There was a case where a butcher escaped by the skin of his teeth—I will relate the story when I come to deal with the magisterial proceedings. The inspection and examination over, the inspector may **seize and carry away** the article, and take to a Justice of the Peace to be dealt with. You should observe that the Medical Officer of Health or inspector may

authorise an assistant to seize and carry away the article ; but the inspection and examination must be done by the M.O.H. or inspector himself. He cannot depute anyone else to do this duty for him.

Well, the article having been seized by the inspector or M.O.H., the magistrate makes his appearance. In England he is a Justice of the Peace ; in Scotland either a J.P., a magistrate, or a sheriff. The accused article may be carried to the justice,* or the justice may be carried to the accused article. That does not matter. What does matter is that the justice should himself inspect the article complained of. That is the usual course. I do not know that a justice is bound to see the stuff. The Act says, "if it shall appear to the justice that the article seized is diseased, or unsound, or unwholesome, or unfit for the food of man," he shall **condemn it to be destroyed** or otherwise disposed of so as to prevent it ever being sold or used for food. I do not see why it should not "appear" to the magistrate by evidence other than the evidence of his senses. Still, it is usual for the justice to go and look at the article before condemning it to destruction.

It is well to know that all the steps hitherto noted can be done without the owner of the article having any notice of it. Thus:—A butcher leaves his slaughterhouse at seven in the morning, to ride into a neighbouring town. At eight o'clock an inspector puts his head in at the slaughterhouse door ; and, spying a cow's carcase there suspended, examines it, seizes it, carries it off to the nearest J.P. By nine o'clock the J.P. has condemned it. By ten o'clock it has been destroyed ; and the butcher knows nothing of the whole proceedings until he comes home to dinner at one o'clock. It may have occurred to some of you that this kind of proceeding—ordering property to be destroyed without even telling the owner—is an unusual kind of proceeding in the United Kingdom. Still, it is the law ; and has been declared to be the law by the High Court of Justice. And no doubt Parliament intended to make it the law.

There was a butcher named Thomas White, who had a slaughterhouse at Willoughby, which is, I believe, in Warwickshire. Into this slaughterhouse went, one morning, an inspector of nuisances named Redfern. White was not on the premises at the time, but a servant was. Redfern very promptly seized and carried off the carcases of four sheep and two fore-quarters of mutton ; and took the whole of the loot to a neighbouring J.P. The J.P. was satisfied that the meat was diseased, unwholesome, and unfit for the food of man, and ordered the destruction of the whole of it. White was not present, as I said, at the seizure ; nor was he present at the condemnation by the J.P. In fact, he knew nothing about it until it was all over. He therefore took objection as soon as he could. He claimed that he ought to have been summoned to appear before that J.P. to see if he had any explanation to give.

To a certain extent, Mr. White had the sympathy of his judges. Mr. Justice (now Lord) Field said he felt very strongly the possible injustice

* In this part of the chapter, I use "justice" or "J.P." to include "magistrate or sheriff" in Scotland.

that might be done in **seizing and condemning a man's property in his absence**. "But," he went on, "I have to consider the whole purpose of the Act as well as its particular provisions." The Act—or, rather, most of it—was passed to allow local authorities to suppress nuisances dangerous to the public health and inimical to the public comfort. The sale of unsound meat was a great evil, requiring prompt and stringent measures to repress it. The paramount object of the Act was "the speedy destruction of a noisome and unwholesome thing." Speed was the object; and how could you have speed if you were going to issue a summons, find out the defendant, and give him time to appear before the justice and take evidence. "What I should like to know," said the other judge, Mr. Justice Manisty, "is, where is the meat to be kept in the interval?" Wherefore it has never since been doubted that the M.O.H. may in your absence seize your stock-in-trade if it be unwholesome and unfit for consumption, gallop with it to a J.P., the J.P. may condemn it, and the whole stock may have become smoke and ashes before you yourself know anything about it.

Naturally, this can only occur when you are away from business; or if the seizure takes place at a branch establishment. But if you are at business, and witness the seizure, ask the inspector or his assistant to what magistrate he is going to take the stuff. He will tell you, probably. If he will not—then go with him. **Follow him into the presence of the justice**; and, if you have any defence, any reason to allege why the food should not be condemned, tell it like a man. As a rule you will not stand much chance of resisting a condemnation unless you have got medical, or veterinary, or chemical evidence. Possibly you will have had no time to collect this up to that moment; but you can always ask the magistrate to give you a few hours' time to see what you can do. Suppose it is a carcase of beef that has been seized, and you are quite sure it is sound; though, not being a scientific person, you cannot answer the arguments, couched in six-syllabled words, of the Medical Officer of Health. Say to the justice, "Sir, will you adjourn this for two or three hours? I am an experienced butcher, and I say that meat is sound. If you will give me time I will try to get a veterinary surgeon to come and give his opinion." The justice can hardly refuse this amount of grace. My experience is that magistrates, paid and unpaid, try to be fair. The only complaint I have is against the muddleheadedness of the unpaid variety. Many a man who is quite sensible and well-informed over a cigar in the smoke-room seems to become a sort of imbecile when he mounts the bench. Still, he is, as a rule, an imbecile who will not consciously do anything unfair. When he says he will adjourn for so long, you drive or ride at your best speed to the nearest veterinary surgeon, pay him his fee, and tell him to come along and bear witness. I need hardly say you only go through this kind of performance when you feel very sure of your ground. With your expert to assist you, you are quite entitled to lay your views before the J.P. He may prefer to believe the evidence of his own eyes, and therefore **he is not bound to hear you, but he can if he likes**. And he can refuse to condemn the carcase, and

AGREEMENT BETWEEN A FARMER AND A BUTCHER.

This Agreement

made the 15th day of June 1902 Between Arthur Lwead of Five Acres Farm, Redditch in the County of Hereford Farmer of the one part and Samuel Smiffle of the Market in the City of Boychester Butcher of the other part Whereby it is agreed as follows

1. In case the said Arthur Lwead shall sell to the said Samuel Smiffle from time to time any animals or carcases or other meat or flesh during the years 1902 and 1903 the said Arthur Lwead warrants that all such animals carcases meat and flesh shall be sound in all respects and fit for the food of man

2. In case the said Arthur Lwead shall supply during the said period to the said Samuel Smiffle any animals carcases meat or flesh which shall be seized and condemned by any Local Sanitary Authority or public officer or magistrate the said Arthur Lwead shall and will indemnify the said Samuel Smiffle against all fines costs legal and other expenses and sum or sums of money which the said Samuel Smiffle shall become liable to or shall pay in respect of such animals carcases meat or flesh and in respect of the defence of him the said Samuel Smiffle against any proceedings taken or instituted against him by reason of the unsound or unwholesome condition of such animals carcases meat or flesh

Witness to the signatures of the said
Arthur Lwead and Samuel Smiffle }

Thomas Coker

The Market, Boychester,
Meat Salesman.

Arthur Lwead
Samuel Smiffle

order it to be restored to you. It was once attempted to be set up by the Birkenhead sanitary authority that the Justice of the Peace before whom the inspector takes his capture cannot hear evidence tendered by the owner of the article.

A sanitary inspector of Birkenhead seized meat belonging to a butcher named Bater, and took it before a Justice of the Peace. Bater went also, and took with him witnesses. The justice looked at the meat, heard what the witnesses had to say, and then declined to condemn the meat. He was not satisfied that it was unfit for the food of man. Ultimately, when Bater had been awarded by an arbitrator his expenses of appearing before the magistrate to resist the condemnation of his meat, the local authority would not pay, because, they said, he had no business to go before the justice. Moreover, said they, if he did go, the justice ought not to have listened to him. But the High Court judges would not stand this. They held that the magistrate need not, at that stage, have listened to Bater; yet, if he chose to do so, he could. Bater had acted reasonably in going to resist the condemnation.

It is, of course, a matter of the greatest importance to the owner of the article seized, when the justice makes his inspection, or hears the evidence upon which he condemns the article or otherwise. The High Court held in one case that where a J.P. condemned some meat the day after it had been seized, he was wrong in so doing. In another case the same Court held that a J.P. who condemned some meat the day after it had been seized was quite right in so doing. Please do not scratch your head and quote Mr. Bumble. They were right in both cases. In the first case **reasonable diligence**—that is, reasonable rapidity—had not been used; in the second case it had. It is one thing to keep a man's meat for twenty-four hours in an exposed place in the middle of July, and then condemn it as tainted; it is quite another matter to keep a man's meat for twenty-four hours in the same place on a frosty day in December and then condemn it. The authorities must not themselves keep the article seized until it goes bad, and then bring a magistrate to condemn it; but if the delay could not have affected the article, then the delay cannot have prejudiced the owner, and he cannot reasonably complain of it. If you have a carcass reeking with pleuro-pneumonia, a day's keeping will not make the disease any worse, though it may make it more apparent.

It may happen that the J.P. will refuse to endorse the seizure—will **refuse to condemn the article** brought to him to be dealt with. What then? Well, you (I assume you are the owner, for the moment)—you must take the article back; you cannot tell the sanitary authority to keep it and ask them to pay you its value. **You can get compensation** for the wrongful seizure—that is, for the loss you have suffered by having the thing taken away; but you must take the article back when it is offered, and make the best of it. Suppose, for example, you have a stall in the wholesale meat market, and for this stall you have slaughtered six beasts. Your trade begins and ends at a very early hour in the morning. The retailers must come

early, so as to have the meat in their own shops before the time of opening. Your trade is all over and done with before 7 a.m. Before the market opens, at 4.30 a.m., when you are unpacking your stock, an inspector comes along, seizes two carcasses out of the six, and walks off with them. He tells you that at 10 o'clock these carcasses will be submitted to the inspection of a justice in the yard at the back of the police court. You go there at that hour, and in the result the magistrate declines to condemn the meat. He says it is of poor quality; but neither diseased, nor unsound, nor unwholesome. Now you have lost the sale of those two carcasses, because your market is over. Still, you must take them back and try to dispose of them. If you cannot do so while they are still sound, you may be able to sell them to a manure manufacturer for a trifle. Your plan is to send in a bill to the sanitary authority for the market value (on the day's prices) of the carcasses, deducting the trifle you got from the manure man. The J.P. may also order the sanitary authority to pay you the costs you have incurred in attending before him to resist the condemnation.

The way to get compensation is by arbitration. The Act of 1875 (section 305) says, that when anyone sustains damage by reason of the exercise by the sanitary authority of any of the powers of the Act, provided he himself is not in default (which means to blame), **full** compensation shall be made to him by the local authority. The way to get it is to send your bill in. Include the value of the goods seized, if they have been destroyed or rendered entirely valueless; and if you have been at the trouble and expense of going before the justice, and have had to pay a solicitor and a veterinary surgeon, or other witnesses, include that also. If, as in Bater's case (*see* p. 1205), the goods were not destroyed but handed over to you, the amount you can claim for them is the difference between their value when they were seized and their value when they were offered back to you. When your bill has been sent in, the local authority will either pay it or not. If they dispute either the amount or the liability to pay anything, you can write suggesting arbitration; or if the amount is not above £20 you can take out a summons before the magistrates, and get it that way. The arbitration will be by one arbitrator. You can agree to one between you, if you like; if not, either you or the corporation can proceed by summons to have one appointed. As to this, you had better consult a solicitor.

In any sanitary district in ENGLAND, rural or urban, where the sanitary authority has adopted Part III. of the Public Health Amendment Act, 1890, a justice may not only order the destruction of meat seized as previously mentioned (*i.e.* when exposed for sale or deposited in a place for the purpose of sale or of preparation for sale), but, if complaint is made to him and he is satisfied that any article of food is diseased, unsound, etc., he may order it to be destroyed, though it was not seized when exposed for sale or deposited in a place for purpose of sale or of preparation for sale. This section was inserted, no doubt, to override a decision that had been given on the 1875 Act. It was a case of a butcher who sold part of a cow that had died of disease. The customer took it home, intending it to be

eaten ; but on second thoughts he decided to call in the sanitary inspector. That officer seized it and had it destroyed on a justice's order. Then the butcher was prosecuted ; but the Court could not convict him, because the meat was not in his possession or on his premises, nor was it exposed for sale, nor deposited anywhere for the purpose of being sold or of preparation for sale when it was seized. The justice, therefore, had no business to condemn it. Thanks to the new Act, wherever the Town or District Council has adopted Part III. thereof, a justice can at any time condemn unsound provisions if they are brought to him—no matter by whom.

But even now I do not see how he is going to *convict the offender unless a proper seizure has been made.*

This leads us to the next important question, which is

PROSECUTIONS IN RESPECT OF UNWHOLESOME PROVISIONS.

Hitherto we have dealt only with the seizure of such provisions and their condemnation and destruction. Now we have to consider **when and how**, and under what circumstances, the man responsible for these provisions can be punished. Firstly, the sanitary authority must prove that its officer seized the goods in a proper place and in a proper manner—that is, at some place where they were exposed for sale, or deposited for the purpose of sale or for the purpose of preparation for sale. These points we have dealt with. Next there must be evidence that the provisions were intended to be sold—no matter by whom—for the food of man. If the article seized is a usual foodstuff, the defendant will be obliged to prove that they were **not intended to be sold as the food of man.**

It does not necessarily follow that because unsound food can be lawfully seized and destroyed, therefore some person is liable to be punished in respect of that unsound food. It is impossible, or nearly so, to frame the words of an Act of Parliament so perfectly as to foresee and include every case that shall arise. You know the mischief you aim at. You try to find words so that your statute will suppress that mischief and punish the guilty person, but in vain. Some of the people you meant to catch are sure to escape from the net of the fowler. And this is especially so when the statute is a penal one—that is, a criminal one. The policy of our law is to give the accused every chance. You must not strain the law against him ; and if on the actual words of an Act he is not guilty, not guilty he is, whatever you may think of his moral guilt.

The Public Health Act, 1875, is no exception to the rule. The people who can be summoned are (1) owners ; (2) persons found in possession of unsound food ; (3) persons on whose premises unsound food is found. But the first of these classes, the owners, are (though unintentionally) protected by the wording of the Act. The London Public Health Act was passed at a later date, and a few of the obvious omissions of the older statute are cured ; but the amended law only applies to London. You have, therefore, as I will show you by a palpable instance applying to this very matter of unsound

provisions, some cases in which a man can be convicted under the London Public Health Act when he could not be convicted under the ordinary Public Health Act (1875). Let me show you the relevant part of the section :

"the person to whom the same belongs or did belong at the time of [*sale* or] exposure for sale [*or deposit for the purpose of sale or of preparation for sale*] or in whose possession or on whose premises the same was found "

shall be liable to be convicted and punished. The words in ordinary print, omitting those in italics, are the Public Health Act, 1875. The whole of the words quoted, including those in italics, are the Public Health (London) Act, 1891.

An instance will show you how the italicised words may make a great deal of difference. A farmer sends to Smithfield Market, London, the carcase of a diseased cow, consigning it to a butcher there. When the butcher sees the cow, he can tell at once that it is unfit for the food of man ; and, being an honest butcher, he puts the carcase away on one side, covers it up, seeks out a sanitary inspector, and asks him to come and have a look at the carcase. The inspector does so, seizes the meat, takes it to a justice, and has it condemned.

The farmer can be summoned under the Public Health (London) Act, 1891, and condemned to pay a fine or go to prison. You see, the farmer was the "person to whom the same . . . did belong at the time of sale . . . or deposit for the purpose of sale."

Now if the farmer had sent his meat to, say, Sheffield Market instead of Smithfield, and the butcher had done exactly what the London butcher did, with the like result as to the meat, the farmer could not have been touched,* because the Public Health Act, 1875, only says, "the person to whom the same belongs or did belong at the time of exposure for sale or in whose possession or on whose premises the same was found" — and the farmer does not come under any of these heads. Clearly the meat was not found on his premises ; neither was it in possession of himself or any servant or agent subject to his orders ; nor can you say it belonged to him at the time of exposure for sale, simply because there never was any exposure for sale—the butcher, you remember, did not expose it for sale, but covered it up and put it on one side until the inspector should have examined it. Some day, I daresay, the legislature will make the law all round as it is in London ; but they have not done so yet.

Now in the case I gave you, the man who sent his meat to Sheffield got off because he was not the owner "at the time of exposure for sale." Now let me take a case where nobody was punished, because, though the article was exposed for sale, the man summoned was summoned as owner when he was not owner.

In 1886 Mr. J. B. Newton was under-bailiff on the Basing Park Estate,

* Unless there is some bye-law of the Sheffield Corporation that would hit him—as to that I cannot say.

in the county of Hants, where the owner, Mr. Nicholson, farmed 4,000 acres, cut up into several farms. The whole estate, as to the farming, was managed by a head-bailiff, one Hudspith; Newton and various other under-bailiffs being under his orders. Now it befell that in August, 1886, Hudspith went to Chichester, and there bought for his master eighty-seven cows, which he took to Basing Park and distributed amongst the farms there. Alas! in about a fortnight's time pleuro-pneumonia broke out amongst them, and fifty-seven head had to be slaughtered. Of those that escaped the axe on this occasion, however, three were subsequently seen to be sickening; and, lest they should infect the sound cattle on the estate, were slain. One was buried—it was a waster. Let us follow the fortunes of the other two.

Hudspith, the head-bailiff, had the two carcasses cut into sides—four pieces in all; but, as the job was done by a farm hand, it was not done in a very butcherly manner, and the meat was hacked about a great deal. Then said Hudspith to Newton, "You go to Portsmouth, and see if you can sell this meat." Newton, who had not been present at the killing or cutting-up, and, indeed, had not seen these cows—for they were not on the farm he managed—was bound to obey orders. So he went to Portsmouth, and there saw a butcher named Batchelor, to whom he promised to send the four sides of beef the next day (October 29th). There was some delay, however, and the meat was not sent as promised; but on the 30th, Newton—again by the orders of his superior—took the meat in a cart to Petersfield Station, and despatched it by rail to Portsmouth Station. The consignment note was, "Sender, Newton: Consignee, Batchelor."

A telegram to Batchelor was sent—"Two carcasses of beef by 11 train addressed to you. Make the best of it.—(Signed) James B. Newton." Batchelor met the 11 train, surveyed the beef, and promptly replied by telegram, "Beef no use to me. I could not find a purchaser. Come yourself. At station not fit to look at. Too dirty.—Batchelor." The railway company took a hand now, as is usual when goods are refused by the consignee. They also telegraphed to Newton, "Meat refused by consignee—wire me as to disposal quickly." Newton then went down to Petersfield Station and asked the Petersfield stationmaster to telegraph to the stationmaster at Portsmouth, "Your telegram, Batchelor's meat. Ask consignee to do the best he can with it. If he cannot dispose of it, ask him to bury it, and charge sender expenses."

Batchelor, being told of this telegram, went and hunted about, and at last he found one Jones, also a butcher, with whom he struck this bargain: Jones was to get the meat (cheap, of course) if the sanitary inspector passed it. Away went the pair to Monkcom, a sanitary inspector of Portsmouth, and all three hied to the railway station. As you might have expected, Monkcom very decidedly refused to pass it. Instead, he seized it, had it condemned by a justice, and then summoned Newton under the Public Health Act. The Portsmouth justices convicted Newton and fined him heavily, holding that he was "the person to whom the meat belonged at the time it was deposited (at Portsmouth station) for sale"

Newton appealed, however. Then the sanitary authority argued that as Newton was the consigner who sent the meat—as he was trying to sell it, conducting all negotiations in his own name, acting throughout as if the carcasses were his own, he must be treated as being the owner of the meat. But the judges said that would not do. It was as plain as a pikestaff, said my lords, that Nicholson, the owner of the estate, was the owner of these carcasses. **“Person to whom the same belongs” is the same as saying “owner.”** They were not going to have any “for the purpose of the Act” business, though Sir Edward Clarke tried to make them do it. They stuck to the literal, plain sense of the words. The meat did not “belong” to Newton, they said, because it was not his, but his master’s. Mr. Justice Mathew said, “That is as clear as daylight.” So it is, in truth. Therefore, not being the owner, he could not be convicted as the owner. And he won his appeal and escaped the fines.

I am not so sure what would have happened if the justices had convicted him of being the person “in whose possession the same was found.” Because I should think it very likely the Courts would have held that though the goods were in the actual physical possession of the railway company, the company were only agents for Newton, the consigner. You see, neither Batchelor nor Jones had taken possession; and as a rule the possession in law belongs to the consigner until the consignee accepts delivery. Here Batchelor had refused delivery. So, although Newton’s case was valuable as deciding the meaning of the words “to whom the same belongs,” let not any other sender of bad meat imagine he is safe from prosecution under the same circumstances. In other words, I think Newton escaped because he had been struck at for the wrong offence, and not because he could not have been hit if the prosecution had known their business. For

THE MAN WHO CAN BE SUMMONED

is he (1) To whom the bad food belongs or did belong at the time of exposure for sale;

or (2) In whose possession the same was found;

or (3) On whose premises the same are found.

It is not always easy to say **when a man is in possession** of bad stuff. For example, the Glasgow Police Act—which deals with bad food amongst other things—has a section similar to the one we are discussing. It renders liable the man in whose possession the condemned stuff is found. A Glasgow sanitary inspector one day had the curiosity to look into a van as it was driving along the Pollokshaws Road. He found something—to wit, the carcase of a cow, very rotten. The van was the property of Parkhill, a butcher. So also was the carcase. But Parkhill was not driving the van himself; it was being driven by James M’Guire, his servant. The inspector made M’Guire pull up in the middle of the road, seized his meat, took it away and had it condemned, and destroyed it. Then the Procurator-Fiscal of Glasgow summoned Parkhill for having rotten meat in his possession.

Parkhill pleaded that he was not in possession of it—"M'Guire was in possession of it," said he. What is more, the plea was successful, until the case went to the Justiciary Court in Edinburgh, when the lords overruled it.

They laid down the law, those clear-headed Scots lawyers, that the possession of a servant is the possession of his master. Just as if I say to you, "Hold this watch for me a minute," the watch is still in my possession, though your hand holds it.

On the other hand, the same Justiciary Court helped one to say **what is not "possession."** A man at Crieff, a farmer, had a beast of some kind which he had killed by a butcher, dressed, and sent up to the Dead Meat Company at the market in Edinburgh. When the carcase arrived, it was seen by an inspector, who seized it before it was exposed for sale. The Crieff man was duly summoned as being the person in whose "possession" the carcase was when it was seized. But he got off. The lords said that possession by the consignee is not possession by the consigner. The Dead Meat Company had actual physical possession; and as they were not the servants or agents of the Crieff man, and could do as they liked with the meat, the Crieff man had lost possession. If the Dead Meat Company had been bound to do as the Crieff man liked with the meat, he would still have had legal possession.

At one time some people thought that the man who had possession of the unsound meat, etc., when it was seized, could not be convicted unless he was exposing it for sale when the inspector seized it. This is **a fallacy**. Still, as I know that even now there are people who hold that view, let me tell you what happened to a man who tried that defence. His name was Carr, and he was a butcher of Selby. A good many years ago Mr. Carr came across Farmer Kettlewell, of Osgodby. The farmer was the unlucky owner of a cow that was diseased—so diseased, in fact, that a veterinary surgeon had ordered it to be killed out of hand. Carr bought that cow, killed it on the spot, dressed it and took it away. He paid thirty shillings for it; and Kettlewell made him distinctly promise that it should not be used for human food.

But the same day, or the next, Kettlewell heard something that caused him to sally into Selby. Making his way to Carr's place, he told him that he had heard something. "Look here!" said Carr, "have you given it any physic?" "None at all," was the answer—the reason being that, as the old tombstones say, "Physicians were in vain." Carr rejoined, "It's good beef (!!), and I am going to pickle it and cut it up." The farmer then reminded him that the beast had only been sold on the express condition that no human being should eat it. The butcher laughed. "I'm going to pickle it," he said. "What? Give you the carcase back and take back the one-pun-ten? No, my boy. It's good beef, I tell you." This statement, and the brazen impudence of the rascal, who cared not for promises or anything else, had the effect, as they say out West, of "raising the dander" of Farmer Kettlewell. Nobody should eat that pickled beef (the thought made him shudder) if he, Kettlewell of Osgodby, could help it. Whereupon he

bethought him of the sanitary inspector: went to that officer, one Mallinson, poured out his story; with the result that Mallinson hastened to Carr's premises, where, somewhere in the back premises, and not exposed for sale, he espied the thirty-shilling cow. "What are you going to do with *that*?" queried the inspector. "Put it into pickle and cut it up," quoth the butcher. The inspector forthwith prevented that by seizing the carcase, carrying it before a J.P., and having it condemned.

Carr was summoned for that in his possession or on his premises the inspector had found a diseased carcase of a cow intended for the food of man. That it was intended for the food of man, and would have been sold for that purpose some day, there could be no sort of doubt. But the butcher set up the plea that as he had not actually exposed the beef for sale he could not be punished. The local Bench accepted this view; but on appeal to the Queen's Bench the judges said the local Bench were all wrong. It was enough, said they, that Carr had the carcase on his premises or in his possession when it was found by the inspector, and that he had it there for the purpose of preparing it to be sold, and intending to sell it for the food of man after it had been pickled. And the superior judges, therefore, sent the case back to the inferior local Bench with a polite intimation that the local Bench must convict Mr. Carr—which they did.

I have said that the Courts have decided that a mere bailiff or servant of the owner of the meat, etc., is not "the person to whom the same belongs or did belong." But they have never said that the only person "to whom the same belongs" is the owner in the popular acceptance of the term. Two judges have said that **a salesman who sells on commission is the owner** of the stuff he sells. You know the practice in the meat trade, I daresay—or many of you know it. It is this: The farmer or grazier or cattle-dealer in the country sends carcases of meat to a man in the Smithfield Market who calls himself a meat salesman. In the fruit trade there is a similar custom. An orange-grower in Spain or Tasmania will send a cargo of oranges to a man in Covent Garden who calls himself a fruit broker. The "salesman" and the "broker" do business in the same way. They sell the meat or fruit to retailers for the best price they can get, deduct their commission, and forward the balance to the sender of the goods. Now in law both the "meat salesman" of Smithfield and the "fruit broker" of Covent Garden is called a "factor," because though he sells goods on commission only, taking no risk (that is, not buying them and selling them again), he has the custody of the goods he sells. The true "broker," in law, is like the Stock Exchange broker, who merely makes a bargain between buyer and seller, but never handles the goods sold.

Now in law a "factor" is, to a limited extent, the owner of the goods he sells. He has some sort of property in them—not so much as the owner (in the popular sense), but still he has some property in them. It may be surprising to the average man to hear that several persons may have property in the same article at the same time—yes, and not be joint owners, either. Thus, if I send my coat to a tailor to be mended the tailor has property in

that coat to the extent of the value of his repairs. He can keep the coat until I pay him. So the factor—*e.g.* the fruit broker or meat salesman—has property in the goods—*e.g.* fruit or meat—to the extent of his commission.

And two judges have said, in a case of *Billing v. Prebble*, that a Smithfield meat salesman who sells on commission is the "person to whom the meat belongs." You see he is not like the bailiff, who is a mere servant of the owner of the meat. If I send a carcase to be sold by a meat salesman, and then ask him for the carcase back, he can say, "Not unless you pay me my commission"; but if I tell my bailiff to take a carcase and sell it, and then call him back and say, "Take that cow's carcase and bury it," he is bound to obey. The moral of which is, that a commission agent who has food for sale—that food being consigned to him—is the person to whom the same belongs, and can be punished if the meat is found diseased.

But—and it is very curious law—if (*except in London*) he sells that meat to a retailer, and on the retailer exposing it for sale it is then seized by an inspector and condemned, the meat salesman cannot be convicted of an offence under the Act. It has been adjudged so in a case where the facts were as I have stated them. The Act says, as you remember, "person to whom the same belongs or did belong at the time of exposure for sale," and the meat no longer belonged to the salesman when it was exposed for sale. The words "*did belong*" refer to meat that has been destroyed, I suppose. The owner who is hit is the man who is the owner at the time of seizure, not the man who once owned the meat and has contrived to palm it off on somebody else.

IN LONDON,

thanks to the Public Health (London) Act, another law prevails. In such a case as I have quoted above the meat salesman could be got at. For by the Act of which Londoners get the benefit it is possible to prosecute the man who originally sold the unsound article—not always, but sometimes. The object of the section dealing with the subject is to get at the wholesale man who has foisted off on a retailer bad provisions. The section is not quite so tight as it might be. Still, it has its uses. It applies under the following set of circumstances:—

(1) The sanitary inspector or M.O.H. must find an article of food in somebody's possession under such circumstances that **it is liable to be seized** under the Act as unfit for food. The words in black type are very important. They indicate not only that the article must be unsound, but also that it must be, at the time it is found, exposed for sale or deposited for the purpose of sale or preparation for sale. A great case was once heard in London before twelve judges, where eleven of them had one opinion and one another on this point. One Dennis, of Covent Garden, had sold to Lyon, a retail fruiterer, twenty bags of "Grenoble" walnuts. Dennis was a fruit broker of the kind I have previously mentioned. The walnuts, having had their skin taken off by chemicals, were liable to go bad quickly, and in this case they were already bad when Dennis sold them to Lyon. Lyon took them to his shop and

exposed some for sale; but when he found that they were nearly all rotten, he withdrew them from circulation. Lyon tried to return the nuts to Dennis; but, it being Saturday, Dennis had shut up and gone home. Then Lyon hunted for a sanitary inspector. He did not find one that night; let the matter rest on Sunday, and on Monday found an inspector and handed over the whole twenty bags to him. They were taken before a magistrate and condemned.

Dennis was summoned; and the first point taken by his counsel was that the walnuts were not, when they were seized by the inspector, "liable to be seized" under the Act. True, said he, they were liable to be seized in the sense that they were very rotten, but they were not liable to be seized, because they were not either "exposed for sale" or "deposited in a place for sale or preparation for sale." If they had been found on Saturday night on Lyon's stall before Lyon withdrew them, well and good. But they were seized when Lyon had made up his mind not to sell them, but to destroy them. Five judges tried to decide the validity of Dennis's argument; but a serious difference of opinion arose, and twelve judges were called together to hear the arguments. At last they decided by eleven to one that the argument was good.

I desire to make it clear that if the sanitary inspector had found those walnuts in Lyon's shop exposed for sale, or deposited for the purpose of sale or preparation for sale—that is, if Lyon had not thrown them on one side as good for nothing, Dennis might have been prosecuted successfully. So it comes to this:—

(a) If a wholesale man in London sells to a retailer in London unsound food, and the retailer is caught with it in his shop exposed for sale or intending to sell it for the food of man, the wholesale man can be punished. But

(b) If a wholesale man in London sells to a retailer in London unsound food, and the retailer discovers the unsoundness and calls in the sanitary inspector, the wholesale man cannot be punished.

This is a curious state of things. I am sure the legislature never meant anything half so absurd. Yet on the wording of the Act it is difficult to extract any other meaning out of them.

IN SCOTLAND

there is a provision similar to that in the London Act, intended to get at the person who first, as it were, put the unsound food in circulation. But, warned by the Walnut case (*see above*), which happened three years before the Scotch Act was passed, the Parliamentary draughtsman was careful to draw the clause in such fashion as to knock on the head any such defence as was held available under the London Act. You remember the whole of the Walnut case turned on the construction of the words, "liable to be seized." The Scotch Act makes it clear that if the food was in a condition so bad that it might have been seized when it was sold to the retailer, the seller is liable.

I have already told you that you are liable to a penalty for obstructing or impeding an officer in the execution of the Public Health Act, and for preventing him from entering your premises to inspect food there. But, for various reasons, you may, if an officer demands to be let into your premises, or a particular part of them, decline to let him in ; and, like the butcher told of previously (p. 1287), you may not be liable for obstruction. I have been asked more than once this question : **Can a sanitary officer break open my premises if I will not let him in ?** Some people seem to think he can. Others think he is like a bum-bailiff—he cannot break into the house, but when he is inside the outer door, he can break open inner doors. Neither of these suppositions is correct. An officer can, on occasion, forcibly enter your premises, but **not without a magistrate's warrant.**

If he has reason to believe that you have, concealed in your place, any diseased, unsound food, or food not fit for human consumption, he ought to go before a magistrate, state his suspicions, and ask for a search warrant. He must take the oath (or make affirmation), and swear to his suspicions ; and, although the application is made to the magistrate privately, he is usually asked to give some reasons for his suspicions. Then, and not till then, can the magistrate issue a warrant, giving the officer power to "search for, seize, and carry away" articles that are diseased, unsound, or unwholesome, or unfit for the food of man. On this warrant the officer may break open any door. In fact, it is his duty to use force, if force is necessary, to enable him to do what the warrant says he must do. He ought only to use such force as is necessary ; and in the course of his search he must not throw things about. If he does, you may bring an action against him. If the door is open, he should walk in that way—not climb in by the window.

Suppose the search reveals stinking meat, or putrid jam, or any of the other "foods" that are daily doctored up and sold to the unsuspecting public, the officer takes them away to be dealt with just as if he had seized them on an ordinary inspection without a search warrant. And if the stuff is condemned, you will be summoned just as you would have been if a sanitary inspector had walked in without any fuss. There is no extra punishment for concealing the article ; that is, it is all the same in law, when you have such stuff on your premises, whether you have it concealed or in open view.

DEFENCES.

Now it is quite possible that an inspector may pounce on you some day, and find in your shop, or slaughterhouse, or in any other part of your premises, an animal, or dead meat, or other provisions for which you are liable according to law, that animal or provision being unsound, when you **did not know it was unsound.** He carries it off. You are summoned. Perhaps the article was exposed for sale, or else you cannot deny that you had it about your place intending to sell it for the food of man. But you

are a law-abiding man, and you would not have touched the stuff if you had known it was bad or unfit for food. You plead ignorance, therefore. You say: "I bought this carcase from a wholesale meat dealer. It was 'faked' so that I thought it was quite good. I paid a good price for it. It was no one-pun-ten cow, but a bit of meat for which I paid the full price of best beef."

How far does your moral innocence avail you? That is the question; and a most important one. And the answer is, that IN ENGLAND **your ignorance does not avail you at all.** It is just the same as the law of adulteration—selling food or drugs mixed with inferior stuff. You are liable, however innocent you may be. Once it is found (1) that the unsound article was on your premises or in your possession; (2) that it was intended to sell it or prepare it for sale as human food; or (3) that it was exposed for sale as human food, you have no defence. Indeed, as I have said before, it is for you to prove that the article was not intended for human food. If you can prove this, you are out of the wood; if you cannot, then it will not help you to prove that you did not know how bad it was.

Do not, however, let me deter you from convincing the magistrate, if you can, that you are morally innocent. Moral innocence may make, and ought to make, a very considerable **difference in the penalty.**

In a certain case decided in 1894, a German-sausage maker of Brighton had his premises entered by an inspector, who found in the sausage factory a lot of unsound meat in the very act of being turned into sausages. The factory was in Duke Street; and the sausage man had also a shop in West Street, communicating with the factory by a private yard. The proprietor was in the shop when his factory was raided; but it could not be proved that he knew of the condition of the meat, or had even seen it. Lord Coleridge said, affirming the conviction of the offender: "The question for us is, whether the magistrate is bound to insist on direct proof of knowledge on the part of the seller of the bad condition of the stuff sold. Perhaps it might be an answer to this contention to say that the Act of Parliament would be nugatory if such proof were insisted on, for then it would always be open to the defendant to say that he was not aware of the condition of the article sold. . . . We are dealing with a statute passed for the protection of the public, the purpose of which would be defeated if it were necessary to show a guilty knowledge in the seller."

Without actually agreeing with the reasons of my lord Coleridge, Chief Justice, I think his conclusions were right. The noble lord seemed to forget that the offence he was dealing with was not selling unsound food, but having it in one's possession—a very different thing. At the same time, there is little doubt that the decision is correct. When you have an offence created by Act of Parliament, you must look at the Act to see what the offence is. Now if the Public Health Act had intended to make the offence an offence of having in your possession or exposing for sale food that you knew to be unsound, it would have said so. It would have said, "and

any person who wilfully and knowingly exposes the same or is in possession," etc. etc. But the Act says nothing of the kind. I am fortified in my opinion on this point by the fact that the Scottish Justiciary Court has come to a similar conclusion in a case of the same kind, where the offender was prosecuted under the Edinburgh Police Act—that Act being similar, in this respect, to the Public Health Act, 1875, and the London Act.

So that ignorance is of no use as a defence. How can you protect yourself, then, from the consequences of having on your premises unsound food which you thought to be wholesome? Or can you, if you sell goods part good and part bad, prevent yourself from being hit by any precaution you may take? **Is a placard any good?** Elsewhere (p. 1313) I have referred to the case of Dennis, fruit broker, of Covent Garden, who sold walnuts to one Lyon. He got off on another ground; but he also set up the defence of "warning placard," and its efficacy was discussed by the twelve judges.

It appears that walnuts are sold wholesale in Covent Garden after this fashion: The broker, on receiving the goods in sacks, opens one at random, for a sample, but leaves the others fastened up. The buyers try as many as they like from the sample sack, and then give their orders for so many of the original packages. When Lyon paid for his twenty sacks, he found staring him in the face over the pigeon-hole of the pay-desk a printed placard:

"SPECIAL NOTICE TO BUYERS.

"Original packages of either fruit or vegetables, the contents of
 "which may partly prove unsound, either from delay in transit or
 "any other cause, are sold on the express condition that the 'Buyers'
 "sort the said contents and destroy the unsound portion before being
 "offered to the public.

"W. DENNIS & SONS."

Now, said Dennis, this notice had the effect of an express contract. If Lyon saw the notice, he must be presumed to have bought the nuts upon the understanding that he would pick out all the bad ones before selling them for food. The judges held that it was a question of fact whether Lyon did not buy, as it were, two lots—the sound walnuts for food and the bad for destruction. In other words, it was a question of fact whether or not *all* the walnuts were sold "intended for the food of man." It amounts to this, therefore: If you sell foreign produce of a kind liable to decay—as walnuts, oranges, grapes—and sell them in the packages packed as they arrive, you will do well to have a placard up like Dennis's placard. It may or may not protect you. It is, at all events, some evidence that you did not sell the stuff, so far as it was unsound, intending it for the food of man.

You can, of course, escape liability, or the chance of it, under this clause (which applies to London only) by unfastening the packages yourself and sorting the fruit, etc. But, as everybody knows, in a place like Covent Garden such a course would involve an entire change in the mode of doing business. The fruit broker is not supposed to have the trouble of sorting out. He sells by sample, and hands over to his customers the packages just

as he receives them from the growers. In a case like the one given above, Lyon had his remedy privately. He could make Dennis pay damages for the walnuts not being up to sample. The decision of the twelve judges (or, rather, of the majority) has been regarded by the legal profession as a very clear decision. I remember that at the time it was given many men of my acquaintance were disposed to think that a man who sells foodstuffs cannot get out of his criminal liability for them if they are rotten and unfit for consumption merely by putting up a notice saying that customers must sort them out. On the other hand, it would be very hard on the fruit brokers—in fact, they could not do business—if they had to sort out every sack of walnuts and every box of oranges they sold.

Remember, however, the placard is only *some* evidence that you sold not intending the whole of the stuff to be used for food. The justices or the jury can accept it or not, as they think best.

A defence under the London Act for the man who is prosecuted when he has sold to somebody else for sale and that somebody has had the goods seized—*e.g.* the wholesale meat salesman, on commission, who sells a carcase of beef to a suburban butcher. The butcher cuts up the carcase, hangs it on hooks, and is in the act of bawling “Buy! buy!” when a picce is taken by a sanitary inspector. It is bad. It is soon condemned, and the wholesale man is summoned. Naturally, if he can prove that the meat was sound when he sold it he is safe. This, however, he may not be able to do. But he may prove, if he can, that he knew nothing about the state of the meat and had no reason for thinking it unsound when he sold it. The defence only applies to this particular kind of case, where the wholesale man is prosecuted in respect of meat seized after he has parted with it. Do not forget that this only applies to London.

But I have not told you **the best of all defences, whether for London or elsewhere**; I was saving it for the last. It is the one that will smash up the best prosecution under the sun; and it is this: *Prove that the food was sound*. Can you do it? Certainly, you can. But the justice has already condemned it as unsound. Well, and what of that? The condemnation is not a judicial proceeding. The justice was not obliged to see you or hear what you had to say on that occasion. Indeed, the article may have been condemned in your absence (*see* p. 1313). In any case, whether you were absent or present, whether the local Shallow was kind enough to hear you and your witnesses or not, you are entitled, if you are summoned, to call all the evidence you can get hold of to prove that the article was sound when it was seized. You generally want a veterinary surgeon and a medical man for this purpose in the case of meat; and to this end, when the carcase has been condemned (or before, if possible) get hold of a “vet.” and a doctor and do your best to let them see the alleged unsound article; then they may be able to help you. In the case of any other food, try to get the justice (if you are present at the condemnation) to give you a sample to have tested by an analytical chemist or a doctor on your behalf. Do not be afraid; speak up. The man’s a man for a’ that he signs himself “Shallow, J.P.” And

without being at all disrespectful to him or his office, you can practically make him (by saying, "I want it for my defence") give you a chance to have the stuff examined by an expert.

Moreover, if you are successful, on the hearing of the summons, in establishing that your meat or whatever it was was wrongly seized, because it was quite sound, wholesome, and fit for food, you will not only come off with flying colours, but you will have a nice little **claim against the local authority for compensation**. Your claim will be for the value of the thing destroyed—I will not tell you to claim every penny of its value—and also for the necessary expenses of going before the justice (if you did go) who condemned the article to destruction.

There is, as you have already been told, the defence open to you that the article was not intended for the food of man. If you prove this, you also get compensation from the local authorities. Thus, if you have a lot of diseased fish which you intended to sell for manure, and the local "polisman" seized it and the local Shallow condemned it, and you, being summoned, prove that you never exposed it for sale as human food, or intended it to be so used, you get off, and send in your bill. Claims for compensation are settled as appears on p. 1306.

The most remarkable—indeed, the only substantial—difference between the London Act and the Scotch Act is as to the defences that are available. In addition to all the defences that are open to the Englishman, the Scot has one or two more; for

IN SCOTLAND

it is a good defence for the prosecuted man to prove that he had **no knowledge of the bad condition** of the animal or article, and could not, by reasonable care, have known of it. It may be that the whole transaction in connection with which the defender is prosecuted was conducted, not by him, but a servant of his. In that case the knowledge of the servant is the knowledge of the master. That is, if you are a butcher with three shops in Perth, of which you manage one yourself and give the other two to the care of MacPherson and M'Guire, two foremen. M'Guire, without you knowing anything about it, buys a carcase full of pleuropneumonia, which carcase he cuts up into joints and hangs up in the shop. You never see the meat; but the sanitary inspector does, and promptly collars it. When you are summoned before the bailie or the sheriff-substitute it is no good for you to prove that you did not know, and could not, by reasonable care, have found out; you must prove that M'Guire did not know and could not, with reasonable care, have found out that the meat was diseased.

The **second peculiar Scottish** defence only applies to sellers of and dealers in butcher's meat, alive or dead—that is, to such a person as a butcher, cattle-dealer or meat salesman. It affects not in the slightest any food except butcher's meat. In order to stop diseased meat before it should get in the retail market, and at the same time to afford to honest dealers some protection against mere error, an entirely new enactment has been applied to

Scotland—new, I mean, in idea. I have already told you that a veterinary surgeon has certain powers of inspection and condemnation north of the Tweed. Well, this relates to him.

Any local authority may appoint a gentleman who is a M.R.C.V.S., or rather, may “approve” him as a person to carry out the Act; and anybody who is going to slaughter a beast (this includes anything, not merely beef), may take the animal to the place appointed by the local authority for examination by that gentleman. He can certify that the beast is sound, in which case you had better take it home and slay it forthwith, and sell the meat even more rapidly; or he can condemn it then and there, in which case the local authority will destroy it. The same law applies to a carcass—a dead beast: you can, after slaughtering, if you have any doubts, take your carcass (the whole of it, mind; including the “lights,” and stomach and bowels, etc.) to the district “vet.” and get him to cast his eye over it. He certifies it sound, or condemns it as unsound, as his judgment and skill dictate. **His certificate protects you**, provided that the meat is sold within a reasonable time after being certified sound. You must pay the “vet.” a fee, fixed by the local authority which appointed him.

You need not necessarily go to the M.R.C.V.S. with a *dead* beast. You can go to the approved veterinary surgeon and get him to come to the slaughterhouse and examine a carcass, or part of one (he must examine it, for this purpose, at the place where it was slaughtered) of which you have your doubts. He may then issue a certificate, passing the whole carcass, or part thereof; and that certificate is a good defence to the butcher if he does not keep the meat too long afterwards. Because, of course, a veterinary surgeon might certify a side of beef as good and wholesome food on the 1st of March, and on the 10th it might be loathsome. The effect of a subsequent sub-section seems to be that in no case must the butcher (or whoever it is) who gets a certificate passing an animal, or part of one, keep the animal or the meat (as the case may be) more than seven days without either selling or destroying it: I mean seven days after the date of the certificate. For the certificate must be sent (1) *after the animal or meat has been sold*, but (2) *not more than seven days after the date of the certificate*, to the Chief Constable of the burgh, city, or county. The Chief Constable will pounce on you if it does not arrive, because he will have received from the “vet.” a copy of it two or three days before. Wherefore, if you do not sell your meat within seven days after it has been passed by the M.R.C.V.S., you will do well to destroy it, or use it for manure, and send the certificate to the Chief Constable.

PROCEEDINGS AND PENALTIES.

The offence of exposing for sale or having in your possession or on your premises unsound food is properly regarded as a more serious offence than mere adulteration. Adulteration is merely cheating in most cases. The other thing is an attempt at poisoning.

The **time** within which the local authority can issue a summons under

the Public Health Acts is six months, as distinct from the twenty-eight days of the Food and Drugs Acts (*see* p. 1235). Subject to that, **the proceedings** are the same with regard to taking out the summons for selling bad meat or other provisions as with regard to adulterated food. Only you never have a private prosecutor in the unsound provision cases; because you cannot have a prosecution unless and until some bad provisions have been seized by an inspector acting for the local sanitary authority. It is no offence under the Public Health Acts merely to *sell* putrid food. If the purchaser of such stuff can prove that the man who sold it knew he was selling, as food for man, an unsound and unwholesome article unfit for the food of man, he may, if he will take the trouble, indict the seller at sessions or assizes and have him punished. But then he has to prove the seller's guilty knowledge—a task not so easy as many people might think. It is no good to say "He must have known": you must prove that he did know.

Now *the penalty* differs in London from the penalty in the rest of England. To take the rest of ENGLAND first, **excluding London** there are three penalties:

1. For **obstructing** or preventing the M.O.H. or inspector of nuisances from entering premises, or otherwise impeding them in their duties. The only punishment here is a fine of £5, with imprisonment (up to one month) if the fine is not paid.

2. For **obstructing** an officer in carrying out a search warrant (*see* p. 1315). Again only a fine—£20, with imprisonment if you do not pay.

3. For **the main offence**—being convicted as the owner (p. 1307) or possessor (p. 1307) of the goods seized or person on whose premises they were seized—the penalty is greater than for either of the other offences. The Bench can either fine you or imprison you. The maximum fine is £20 and the maximum imprisonment three months, so that the justices, or stipendiary or police magistrate, may give you this sentence: "Fine, £20 and costs. If not paid to be levied by distress"—*i.e.* like sending the bailiffs in for rent—"and if no sufficient distress then one month's imprisonment." Or he may say, "William Jinx, your offence is too great and too serious to be adequately punished by the infliction of a fine. You are a wealthy man; and £20 would be nothing to you. I therefore sentence you to three months' imprisonment." I know magistrates who never give the option of a fine to a man who is convicted of an unsound food offence—unless he proves that he was not to blame in the slightest—*e.g.* that he was ill, and in his absence his assistant, for his own lucre, bought and exposed for sale a diseased carcase.

Do not run away with the idea that you will get off with £20 and costs always, even if you are fined. For there is a merry little proviso in the section (117) of the Public Health Act, 1875, which may land you for a lot of money. It is better to be caught with a whole diseased cow than with ten small steaks off that same cow. Better to be caught with a whole sack of diseased walnuts than with ten paper bags containing a pennyworth apiece. An old proverb says, You might as well be hanged for a sheep as for a

lamb. Let me tell you, you can be hanged a great deal more for two legs of mutton than for a sheep. This seems strange, but it is true. For you can be summoned and **fined or imprisoned for every animal or every piece of meat condemned**. That is—one cow, one fine and costs; one steak, one fine and costs; ten cows, ten fines and ten lots of costs; ten steaks, ten fines and ten lots of costs. As for fruit, vegetables, corn, bread, flour, or milk, the principle is a little different. If you sell a sack of walnuts, and 400 of them are rotten, you cannot be fined £8,000 and 400 sets of costs, nor imprisoned for 100 years. The articles mentioned are reckoned by the parcel; so that one sack of walnuts or corn is one offence: so is one penny bag of walnuts or one $\frac{1}{2}$ lb. bag of flour. Each renders the offender liable to the same sentence. Milk goes by the can, churn, tin, bottle, or whatever else it is seized in. Flesh, fish, poultry and game are reckoned by the piece as it is when it is seized. Thus, a whole bad cod is one; if the cod is cut into twenty pieces, it is twenty; and there can be twenty summonses, and twenty fines, and twenty sets of costs or twenty sentences of imprisonment.

IN SCOTLAND AND IN LONDON there is another punishment in store for the persistent offender—a punishment borrowed, I am told, from a Colonial statute. It is in use in France also. It is one of the punishments advocated by Bentham, the law-reformer, who was in favour of the proposition that the punishment should fit the crime. By the London Act, if anyone has been **convicted twice within twelve months** of an offence such as I have specified, he can, in addition to other punishments, be subjected to the humiliation of having his convictions placarded outside his own premises. I do not know whether the punishment has ever been inflicted. If it has not been, it may yet be if the circumstances of a case call for it.

To render himself liable to this infliction there must be—

- (a) Two convictions for unsound food offences;
- (b) Both convictions within twelve months;
- (c) The Court must be satisfied that the defendant knowingly and wilfully committed both offences.

When these three conditions are fulfilled, the Court where the second conviction takes place may order a notice to be posted on any premises occupied by the offender, stating the nature of his offences. The wording of the placard is left to the discretion of the Court, as also is the manner in which the placard is to be affixed. The notice may be kept up for twenty-one days—not more; and if the offender pulls it down, or tears or defaces it, or destroys it, or covers it up, he may be summoned again and fined not more than £5.

IN SCOTLAND

penalties run very much the same as in England—with slight variations, that is all. *Obstruction* of an inspector, approved veterinary surgeon, or M.O.H. is liable to a fine of £5 for each offence; but—and here is a difference from

the English law—in certain cases the offender may be imprisoned. He cannot be imprisoned for this offence by anyone but a sheriff—*e.g.* not by a mere bailie, though he may be that awe-inspiring descendant of the immortal Nicol Jarvie, a Glasgow bailie. And the sheriff can only order imprisonment (up to one month) either when this is the second conviction for obstruction within twelve months, or when it is proved that the defender intended to prevent the discovery of an offence. In other words, the sheriff may put you in prison for a first offence if satisfied in the evidence that you were helping to cover up an actual breach of the law. Otherwise, he can only imprison you if you have obstructed twice within twelve months. As to obstructing a police constable who wishes to search a cart, etc. (*see* p. 1294), the only penalty seems to be a fine of £5 on every occasion.

For the main offence the penalty in Scotland may be higher than in England. South of the Border, save only in the capital, the biggest fine is £20. The Scotsman on whose premises or in whose possession unsound food is found, or to whom “the same belongs or did belong at the time of sale or exposure for sale or deposit or transmission for the purpose of sale or preparation for sale,” may be fined £50 for every animal, or article, or parcel of fruit, vegetables, corn, bread, or flour that is condemned. But although the Scot is liable to a heavier fine than the Southron, he is not so likely to be sent to cool his heels in the local gaol. To begin with, only the sheriff can inflict sentence of imprisonment under this Act. If you, freend Sandy Mac-Flesher, should be prosecuted for exposing for sale in the Sautmarket one article of food—to wit, the carcase of a cow—the same being putrid and unwholesome and not fit for the food of man, you can think yourself lucky if you are tried by your neighbour the bailie. For at the most that worthy man can only fine you. On the other hand, if you are summoned to face the sheriff, and the Procurator-Fiscal leads evidence to prove that you knew the beastie was putrid, and nevertheless tried to sell it for the food of man—as the Act says, “**knowingly and wilfully**” committed the offence—the sheriff has power to send you to prison for three months. Also, if he thinks you stand in need of exercise, he can order that imprisonment to be with hard labour. Whether you are fined or imprisoned, you may be ordered to pay expenses (*Anglicé*, “costs”), including the expenses incurred in seizing, detaining, and disposing of the food seized.

You see, from a consideration of the defences open to an alleged offender and of the penalties and punishments that may be inflicted, that the Scots Act is much less burdensome, much less strict on the seller of food, than either the English Act or the London Act. The defence “I did not know, and could not with reasonable care have found out,” is good in Scotland. In England it is not. The Scot can only be sent to prison if it is proved that he is morally as well as legally guilty—that is, that he has wilfully broken the law. The Englishman can be imprisoned however morally innocent he may be; though my experience is that magistrates generally inflict a money penalty only when the defendant has not been to blame—or has merely been careless. Still, there are one or two who take the line that the man who

sells unsound food is little better than one who should poison a reservoir. They say, "If we find a man selling bad fruit, or diseased meat, or just getting ready to make into jam a mass of putrid raspberries, we are going to send him to gaol. It is all very well for him to disclaim knowledge of the matter, and ask to be let off with a fine. But we think if it is a known fact that everybody convicted of an unsound food offence will surely go to prison, this innocent gentleman will take a very good look-out that no unsound food is admitted to his premises." This kind of thing may happen, and does happen, in England. It cannot happen in Scotland—and doubtless the canny Scots know their business best

One aspect of the "Unsound Food" question has always puzzled me. It is this: How much unsoundness is allowable in a packet of perishable food without bringing the packet within the description of "unsound and unfit for the food of man"? You know what I mean. A basket of plums stands in the shop of a retail fruiterer. It is just possible that every plum is sound and fit to be eaten. Most likely, however, unless the plums are what is called "selected fruit," there will be some damaged ones and some unsound ones among them. Sometimes there will be more, sometimes less. Not long ago I bought, by way of experiment, two pounds of plums in a not very fashionable part of London. Examining them, I found one-third quite unfit for food; another third by no means sound—bruised, I mean; and only one-third really sound and wholesome. Assuming that all the plums were like those I bought, could that shopkeeper have been convicted of exposing a basket of plums for sale (they were lying exposed in a basket when I bought them) unfit for food? I think he could. But suppose only one-third had been unsound and two-thirds perfectly sound: what then? I am not so sure. Again, suppose only one plum had been rotten and full of possibilities of dysentery, and the rest all good. Commonsense seems to say that no conviction could take place. Yet it is not without doubt. The commonsense view is to look at the packet—in this case, the basket of plums—as a whole, and ask, "Taken as a whole, are these plums sound and fit to be eaten or not?"

Mind, I do not warrant this to be the law. Frankly, I do not know what the law is in such a case. Nor do I think that anybody else does. The Acts have not made any express provision to meet the case. I could argue that in the letter of the Public Health Acts, if a man exposed for sale a bushel basket of plums, containing one rotten plum, he was guilty of an offence—the offence of exposing for sale "fruit unsound, diseased, or unwholesome, or unfit for the food of man." But my commonsense would revolt against such a proposition; and I should hardly expect any magistrate or judge to act on such a view.

CHAPTER IV.

CHEMISTS AND DRUGGISTS.

DRUGS—POISONS—PHYSICS.

Who may retail poisons—What is a pharmaceutical chemist—Only qualified persons allowed to take the name—Drug companies—Must employ chemists to sell poisons—Unqualified assistants—Illegal for them to dispense poisons—Formalities in the sale of poisons—"Poison" means everything containing poisons—Patent medicines—Proprietary medicines—The chlorodyne case—Balsam of aniseed case—Licoricine—Infinitesimal quantities—The result so far as the trader is concerned—Poisons which may only be sold to known persons—Introduction—Register of poisons—Form of—Master liable for servant—Pharmacy Acts do not apply to wholesale transactions—Nor to medicine supplied—Doctor's prescription—If dispensed by qualified chemist—THE SALE OF ARSENIC—Arsenic usually to be coloured—*Poisoned grain*—*Poisoned flesh*—Exception for killing vermin—THE MAKING-UP OF MEDICINES—Anyone can dispense—Except poisons—"Infamous" conduct—*Pharmacopæia* standard.

PARLIAMENT has thought fit in its wisdom to say that poisons shall only be sold by people possessing special qualifications for knowing the nature and quality thereof. The enactments go to this extent—that no person is to sell or keep open a shop for *retailing, dispensing or compounding poisons* unless he is a properly qualified pharmaceutical chemist. A properly qualified pharmaceutical chemist is a man either carrying on business as such a chemist before the Pharmacy Act, 1854 (I suppose, however, few of these survive), provided that person has duly registered his name on the list of the Pharmaceutical Society, or one who has qualified himself by passing the examinations of that society and registering himself on their register. Some people have an idea that you may call yourself "Chemist and Druggist" even if you are not qualified, provided you do not call yourself pharmaceutical chemist. This is quite a mistake. Nobody except a person duly qualified as above may assume the title of chemist and druggist, or pharmaceutist, or dispensing chemist, or dispensing druggist, or pharmaceutical chemist; and if he does assume any of these titles without having been duly qualified by admission as a member of the Pharmaceutical Society he is liable to a penalty of £5. He will probably have an action brought against him for the £5 by the Society.

Now I daresay it is within the knowledge of everybody that a great many of the largest chemists' and druggists' businesses are carried on by persons or companies not duly qualified by admission as members of the Pharmaceutical Society. If these people or companies do not call themselves by any titles above mentioned, but simply trade under some such name as "Drogen's Drug Stores," they do not offend against the law.

But the law goes on to say that nobody shall retail, dispense, or compound poisons unless he is a qualified chemist. How do these big drug

companies get over this difficulty? I need hardly say that if the drug companies do not deal in poisons they are under no liability whatever. But if they deal in poisons they **must employ qualified pharmaceutical chemists**, members of the Society, to sell and make up poisons and substances containing poison. The Pharmaceutical Society once tried to put such people down. There was a limited liability company calling itself the London and Provincial Association, which carried on the business of chemists and druggists. The real owner of this business was a man named Mackness, who was not a qualified chemist. This gentleman owned practically all the shares. Nominal holdings were in the hands of other people—you know that there must be seven shareholders at least in a company. One of these nominal shareholders was a gentleman named Longmore, who was a duly registered pharmaceutical chemist. It was Mr. Longmore who carried out all the business of the company in relation to the sale of poisons. He was paid a salary, and was, in effect, a servant of Mackness.

The Pharmaceutical Society, by way of testing the legality of these proceedings, which, they contended, were only an evasion of the Pharmacy Act, took action against the company. Some poison having been sold at the company's premises by Longmore, an action to recover the penalty of £5 was brought against the company. The case went right up to the House of Lords, the Society having resolved to get the very best and highest legal opinion. The House of Lords decided that there was nothing illegal in the company carrying on the business of retailing, dispensing, and compounding poisons so long as they did so by the hand of a duly qualified and registered chemist. They held that the object of the Act was to give the public the benefit of skilled attention in the purchase of poisons. Therefore, if the actual person who sold or made up the poisons was such a skilled person as the Act required, it did not matter whether he was selling the poison for his own profit or the profit of an employer.

But although an unqualified company may sell poisons by the hand of a qualified assistant, a qualified chemist may not sell poisons by the hand of an **unqualified assistant**. You all remember the celebrated Pickwickian jurymen who asked to be relieved from the discharge of his duty to his country on the ground that he had left in charge of his shop an errand boy who did not know the difference between one drug and another, and was likely to poison half the neighbourhood. This was before the Pharmacy Act. The jurymen would now get into trouble if he allowed that boy to sell poisons at all, whether he did any damage or not.

A case was tried not long ago when the Pharmaceutical Society brought an action to recover the penalty of £5 against a man named Wheeldon, the unqualified assistant of a qualified chemist. This gentleman, in the absence of his employer, had sold a packet of somebody's Vermin Killer—a preparation containing strychnine. After a long fight it was decided that Wheeldon was liable to pay a penalty. It was argued on his behalf that it could never have been intended by the legislature to make all chemists keep a qualified assistant. Mr. Justice Hawkins disposed of this contention by saying that if

a qualified chemist kept an unqualified assistant, and went out or the shop so as to leave the unqualified one in charge, he could protect himself by locking up all the poisons.

It was far more important to stop the sale of poisons by unqualified people than to cause certain tradesmen to lose a little trade. So that, if you are a chemist, and you wish to take a day's holiday, and have only an unqualified assistant to leave in charge, you had better take the advice of the learned judge and **lock up all your poisons.**

A list of poisons is given in the Pharmacy Act, 1868; which list can be added to by the Pharmaceutical Society, by going through certain formalities, one of which is advertising in the edition of the *London Gazette*. Below I give you a list of the poisons as far as I know them up to date. You will observe that I have divided them into two lists, "A" and "B." All these are poisons which must not be sold by unqualified persons. **The list headed "A"** is subject to a further restriction. None of the drugs in that list may be sold, even by a qualified chemist, to anybody he does not know unless that person is introduced by somebody he does know. And, with regard to all the poisons in both lists, any person selling them must write down the name of what he sells on the box or wrapper in which the article is contained, and must also label the same "Poison." This label must bear the name of the seller and his address.

I ought to say the prohibition—that is, the rule that nobody except qualified chemists may retail poisons in these lists—extends not only to the articles specified when sold by themselves, but also to those articles when sold mixed with something else. There have been several cases before the Courts on this point. There are certain proprietary medicines and patent medicines which contain poisons. Any **patent medicine** may be sold by anybody (qualified or not). A patent medicine has not the wide meaning attached to the phrase by people in general. A patent medicine is one which was an invention of somebody, in respect of which Letters Patent have been taken out, just as patents are taken out for any other invention.

There are also other medicines, called in law **proprietary medicines**. These are compounds made up by anybody who chooses to make them up, called by a particular name, and sold with a stamp on them denoting that they are proprietary medicines. Now a proprietary medicine is not on the same footing as a patent medicine. If it is non-poisonous anybody may sell it. But if it is poisonous not everybody may sell it. Now for a great many years it was the custom, and in many country districts it is the custom to this day, for grocers and other tradespeople to sell proprietary medicines.

At last the Pharmaceutical Society took action. They brought an action against a man named Riper, a grocer, for selling a proprietary medicine named Chlorodyne. He had sold two half-ounce bottles. The Chlorodyne contained two poisons—opium and chloroform. It was said during the case that Chlorodyne was a very useful medicine, and had been in use for forty years. The proprietors contended that it could be sold by unqualified persons because it was not a poison pure and simple, but only a mixture containing poisons.

But the High Court, on being appealed to, said this was a mistake. They said the sale of poison was none the less a sale of poison because the poison was mixed with something else.

The next case was one about Powell's Balsam of Aniseed. A grocer, or some other unqualified person, was prosecuted for selling this, which is also a proprietary medicine containing opium. The owners of the article took the case up to the Court of Appeal, to try to upset the decision in the Chlorodyne case. But the Court of Appeal unanimously agreed with the judges who had decided the Chlorodyne case. They would not listen to the contention that an unqualified person can sell poison if he mixes it with something else. Sir A. L. Smith said, "If I sell you a mixture containing half chloroform and half water, can you say that I do not sell chloroform?" It was unanswerable. Of course, nobody can say that you do not sell chloroform under such circumstances.

But in another case that went to the High Court, where a man sold "Licoricine," which also contained opium (to such a trifling extent that a man might have drunk at one draught the whole bottle of the mixture without any evil effect), the Court decided that the seller thereof ought not to be convicted. The ground was that the amount of poison contained in the Licoricine was too trifling to take any notice of.

The effect, as far as the trader is concerned, is that nobody may sell any proprietary medicines containing any of the poisons mentioned in the list set out below unless he is prepared to prove that the amount of the poison is so trifling that it could not have any effect on anybody. I believe the immediate result has been to injure very considerably many proprietors of proprietary medicines. At the same time, it has considerably harassed those chemists and druggists who have taken the trouble to acquire the necessary knowledge and to pass the necessary examinations to qualify for pharmaceutical chemists.

LIST OF POISONS.

A.

(Poisons not to be sold except to people known or introduced to the chemist.)

Arsenic and its preparations.

Prussic acid and its preparations.

Cyanides of potassium, and of all metallic cyanides, and all preparations thereof.

Preparations of strychnine; strychnine and all poisonous vegetable alkaloids and their salts.

Preparations of atropine.

Aconite and its preparations.

Emetic tartar.

Corrosive sublimate.

Cantharides.

Savin and its oil.

Ergot of rye and its preparations.

B.

(Poisons not to be sold by unqualified persons.)

Red oxide of mercury (commonly called red precipitate of mercury).

Ammoniated mercury (commonly called white precipitate).

Every compound article containing any poison within this list when sold for destruction of vermin.

Tinctures and all vesicating preparations of cantharides.

Chloral hydrate and preparations.

Nux vomica and preparations.

Oxalic acid.

Chloroform.

Belladonna and its preparations.

Essential oil of almonds, unless deprived of its prussic acid.

Opium ; all preparations of opium and of poppies.

Besides seeing that he sells none of the poisons in list "A" to people whom he does not know or who have not been introduced to him, the chemist and druggist **must keep a register** in which he enters the sale of all poisons in that list. The register must be in the form given at the end of this paragraph. In the various columns (which I have filled in in italics) he must state the date of the sale, name and address of purchaser, name and quantity of poison sold, and the purpose for which it was required. Naturally, he will have to rely on the purchaser to tell him for what purpose the poison was required. And he must see to it that the purchaser signs the register in the column left for such signatures ; and also that the introducer, if the customer was introduced, signs also in the proper column. The chemist is not bound to sell poison to anyone who asks for it ; and if he has any suspicions that a drug is required for any unlawful purpose, he should, as politely as possible, refuse to sell it.

FORM OF REGISTER.

DATE.	NAME AND ADDRESS OF PURCHASER.	NAME AND QUANTITY OF POISON SOLD.	PURPOSE FOR WHICH IT IS REQUIRED.	SIGNATURE OF PURCHASER.	SIGNATURE OF PERSON INTRODUCING PURCHASER.
1902. Nov. 15.	<i>William Styles, 90, Herne Hill, S.E.</i>	<i>Strychnine. 3 oz.</i>	<i>Killing vermin.</i>	<i>W. Styles.</i>	<i>Richard Rowe.</i>

The register must be filled up before the poison is delivered to the purchaser.

Any chemist who does not obey the law with regard to filling up the register, selling poison in list "A" to people not known or not introduced to him, delivering poison before making the entry, and not making proper inquiries as to the purpose for which the poison is required, is liable to be summoned before two justices of the peace or a police magistrate in

England, or a sheriff in Scotland, and may be fined not more than £5 for the first offence and not more than £10 for any subsequent offence. This is one of the cases, too, where **the master is liable for the servant**. For if any apprentice or servant in the employ of a chemist sells a poison without the prescribed formalities, the master is liable to be fined. And, of course, the servant or apprentice, if not a qualified chemist, will be liable to a penalty of £5 for selling the poison at all.

None of these formalities apply to articles to be exported from Great Britain by wholesale dealers; nor do they apply to sales by wholesale dealers to retail dealers in the ordinary course of wholesale trade; nor do they apply to any medicine supplied by a legally qualified doctor to his patient. Lastly, they do not apply in cases where a qualified pharmaceutical chemist dispenses medicine containing poison; but in the last case the chemist must label the medicine "Poison," and the label must have the name and address of the chemist on it. Moreover, in the last case, the chemist must enter in a book to be kept by him for the purpose the name of the person to whom the medicine is sold or delivered and the ingredients of the mixture. Medicine, of course, includes ointment or any other substance for internal or external application intended as a cure for any ailment.

There is a special Act of Parliament dealing with **THE SALE OF ARSENIC**. It was passed in the year 1851, at a time when the public had been considerably scared by a series of crimes committed through arsenic, which is, as I dare say you know, colourless and practically tasteless. In order to regulate the sale of this deadly poison, it was enacted that chemists should keep a special register for the sale of it. This register differs slightly from the register of poisons given above. It must give particulars not only of the name of the person, but also of his occupation. Moreover, the conditions under which the sale of arsenic may take place are rather stricter than in the case of other poisons. It will not do in this case for the chemist merely to have an introduction to the customer. If he does not know the customer personally, he may only sell him the arsenic in the presence of a witness who knows both the chemist and the purchaser. This witness has to sign his name in the register, as also must the purchaser and the chemist. It should be said that at the time of the passing of the Arsenic Act persons other than pharmaceutical chemists might sell arsenic. The point I wish to elaborate here is that the chemist is not safe, when he sells arsenic, merely to make an entry in his ordinary poison register: he ought to keep a special book with a column stating the condition or occupation, rank of life, etc., of the person who buys the arsenic.

In order to prevent the deadly colourless powder from getting about and being mixed with food by accident or design, it is enacted that whoever sells arsenic must, before he sells it, mix it with soot or indigo in the proportion of one ounce of soot or half an ounce of indigo at least to one pound of arsenic. But if the purchaser states that the arsenic is required not for use in agriculture, but for some other purpose for which the

mixture of soot or indigo would render the drug useless, the chemist may use his discretion as to whether he sells it unmixed or not.

But if he sells it unmixed he must sell it in a quantity of at least ten pounds at a time. The reason of this is because arsenic is used in certain manufactures, and in such cases the mixture of colouring matter would render the drug useless for the purpose of the manufacture.

The penalty^a for selling arsenic except as above laid down is a fine of £20, which fine may be inflicted in England or Ireland by the ordinary petty sessional or police court, or in Scotland by the sheriff. Not only is the chemist who sells it liable, but so also is any purchaser who gives false information as to name, address, occupation, or purpose for which the drug is required; and anyone who signs the book as a witness when he does not know the purchaser is liable to a similar penalty. I should also say that if any person not a qualified chemist sells arsenic, he may be liable not only under the Act given in the first part of this section for selling poison when he was an unqualified person, but he may also be liable under the Arsenic Act for selling arsenic contrary to this Act.

There are certain **exceptions to the rules about the sale of arsenic**. The first is that the Act does not apply where the arsenic is part of the ingredients of medicine required to be compounded according to the prescription of a legally qualified medical practitioner or member of the medical profession. The second exception is that it does not apply to transactions between a wholesale dealer and a retail dealer in the ordinary course of business. But note well, that to avoid coming under the Act the retailer must give his order to the wholesale dealer in writing. If you refer to the case of other poisons you will find that no order need be given in writing. The word arsenic, as it is used in the Arsenic Act, includes arsenious acid and the arsenites, and all other colourless poisonous preparations of arsenic.

Another Act of Parliament dealing with poison is an Act of 1863, whereby a penalty of £10 is imposed upon everyone who sells, exposes for sale, or offers for sale any **grain, seed, or meal** which has been so **steeped or dipped in poison** or with which any poison or other thing has been so mixed as to render it poisonous and calculated to destroy life. And anybody who takes such grain, seed, or meal, and knowingly and wilfully scatters it about or puts it down or into the ground, or places it in any exposed situation is also liable to a fine of £10.

Now this enactment is intended to protect birds and animals—especially birds. It had been, and still is, a not uncommon trick of revenge for people to throw poisoned grain about to poison other people's birds. For example, Black George the poacher, having been condemned by Squire Western to imprisonment for snaring the squire's pheasants, comes out of the county gaol vowing revenge. He therefore steeps some grain in arsenic and takes it on to the squire's land and throws it about the game preserves. Squire Western's pheasants and partridges pick up the grain and swallow it greedily, with the result that many of them are found dead soon afterwards. It is against this

kind of thing that the Act is directed. But it is, or was, not at all unusual for farmers to steep their grain in arsenic before sowing. The steeping has some beneficial effect, I believe. The Act of Parliament therefore expressly declares that it does not prohibit the offering or exposing for sale of any solution, infusion, material, or ingredient for dressing, protecting, or preparing any grain or seed for *bonâ fide* use in agriculture. Neither does it prohibit or punish the sowing of seed so dressed or prepared. It comes to this, therefore: that a chemist in an agricultural district may sell poisonous preparations or seeds steeped in arsenic to farmers or their agents, but he will run a great risk if he sells any to other people.

To a like effect is the **Poisoned Flesh Act**, passed in the year 1863. This Act was largely directed against people who tried to poison other people's dogs and cats. And it was therefore enacted that every person who puts or causes to be put on any land flesh or meat mixed with or steeped in or impregnated with poison so as to render the flesh or meat poisonous and calculated to destroy life should be liable to a penalty of £10. In Ireland, however, the owner or occupier of land may strew his place with poisoned meat if he first posts up a notice in a conspicuous place and sends notice in handwriting to the nearest constabulary station. You see, it is not necessary for the person charged to be proved to have poisoned anybody or anything, nor is it even necessary to prove that it was intended to poison anything or anybody: all that is necessary to be proved is that he places or causes to be placed the poisoned meat or flesh on the land.

But there is some lawful use of poisoned meat or flesh. Everybody knows, I suppose, that stack-yards and fields of grain and vegetables are sometimes infested with vermin. So also are the drains of houses sometimes. I do not propose, as a sanitarian, to advise anybody to get rid of a plague of rats and mice by poison; because the rat, when it feels the poison taking effect, will generally run into its hole and die there. Secondly, it will decay there, and its putrefying carcase will stay with a stench that will very likely cause more trouble and expense, not to say annoyance, than the live rat caused. I have known people who have used arsenic and strychnine liberally to kill vermin to be obliged to have their drains taken up and clear out the carcasses.

Still, it is lawful for the occupier of the dwelling-house or other building to set poisoned flesh or meat in the house or building to kill vermin. He may also set poison inside a rick or stack, or inside an enclosed garden belonging to his house, for the same purpose. But if he sets poison in drains he must take care that there is some sort of grating over the drains to keep dogs out; for if the drain be open so that a dog can get in, the owner of the drain who places poisoned meat there will be liable under the Poisoned Meat Act.

THE MAKING-UP OF MEDICINES.

There is nothing to prevent any person, whether he be a qualified pharmaceutical chemist or not, or a qualified apothecary or not, from dispensing medicines. With an exception (and this is a warning to medical

practitioners who try to get work done too cheaply): the British Medical Council have held recently that any doctor who **employs an unqualified dispenser to dispense poisons**—which of course include medicine mixed with poison—is guilty of “infamous conduct in a professional respect.” But anybody is not allowed to dispense medicines containing poison. Medicine containing poison can only be dispensed either by a doctor himself or by a qualified pharmaceutical chemist or apothecary. And if the Pharmaceutical Society should catch a dispenser without the requisite qualifications, in the service of a medical man, and should be able to prove that the dispenser has dispensed medicines containing a poison given in list “A” or list “B” (see pp. 1328-9), the Pharmaceutical Society will bring a little action against that dispenser and recover the penalty of £5.

Every chemist, whether he be qualified or not, who dispenses medicine must dispense it according to the *British Pharmacopæia*. This standard for drugs and medicines has been treated of to some extent in the chapter on adulteration. What was said there was that people who buy drugs are justified in expecting to be served with drugs according to the standard of the *Pharmacopæia*. If the seller sells drugs of any other quality he may be prosecuted under the Adulteration Acts for selling drugs not of the nature, substance, and quality demanded. Now what I want to say is that the Pharmacy Act does not deal quite with the same thing. The Pharmacy Act simply says that any person who dispenses medicines shall dispense them according to the *Pharmacopæia* standards. If he does not, he may be sued in a county court or small debts court for a penalty of £5. This is quite independent of the Adulteration Acts. It has no reference, as the Adulteration Acts have, to the sale being to the prejudice of the purchaser or anything of that kind. The Pharmacy Act, moreover, is very much more limited in its application than the Adulteration Acts, referring as it does only to the dispensing or compounding of medicines.

Book VIII.

THE LAW OF WEIGHTS AND MEASURES.

CHAPTER I.

THE LAW AS IT APPLIES GENERALLY.

The old law—Local customs—Weights and Measures Act, 1878—Uniformity established—The standard yard and the standard pound—How the standard gallon arrived at—Apothecaries' and troy weight—Dry and liquid measures of capacity—Heaped measure forbidden—Contracts to be deemed according to imperial weights and measures—Local and customary weights and measures illegal—Sale by bulk is legal—Having in possession weight or measure not of Board of Trade standard—A $\frac{1}{4}$ -gill measure—What is "for use for trade"—Not merely buying and selling—Part of a trade operation—What is a measure—Churn gauged for railway company's convenience—Beer-barrels—False and unjust scales, weights, etc.—"For purpose of trade"—Instances of "false and unjust"—Two railway parcel machines—Scales with shot-balls—Purposes of adjustment—Weighing goods and wrapper together—Legal if properly done—Putting paper on the weight scale—When legal and when not—Machine capable of being used unjustly is unjust—False spring balance—Weights to be cased in brass, iron, or copper—Board of Trade model bye-laws—Wilful fraud in using weights, etc.—Offender may be sent to prison—Manufacturing false weights, etc.—Scales with movable pans—Should balance when pans exchanged—Unstamped weights and scales—Local standards—Must be re-tested periodically—County or Borough Council to fix times and places for verifying weights and measures—Inspector bound to stamp correct weights and measures—Must give certificate if requested—No defence that no facilities were afforded—Beer-barrel—Denomination on weights and measures of capacity—No need for re-verifying—Powers of inspectors—To enter premises—May be general—Inspector may demand to see all weighing machines, weights, and measures—On premises or in possession—When master is away ought servant to produce weights, etc.—Inspector bound to produce warrant if asked—Fees must be charged by inspector for stamping weights—Convictions may be published—A good DEFENCE—Vessel not used as a measure—Metric system legal—Scale of inspector's fees.

THE law relating to weights and measures in the United Kingdom has been considerably altered during the last quarter of a century, and is likely to be altered even to a greater extent within the next quarter of a century. At one time the law practically amounted to this: That anybody could sell by any sort of weight or measure that he pleased, so long as he did not represent himself to be selling more than he actually was selling. There were all sorts of local and customary weights and measures obtaining in different parts of the country and in different trades, and it was found that such an absence of uniformity left a great many openings for fraud. Thus, you went to a man to buy a pint of oil, and instead of giving you

an imperial pint he gave you something less. If you prosecuted him for the cheat, he pleaded that in his part of the country a pint of oil meant a particular local kind of pint, of which you, as a stranger, were entirely ignorant, but which you ought to have known about by polite legal conviction.

As the witty Scotsman who once presided over the City of London Court wisely observed to a foreigner, "You are supposed, immediately you land at Dover, to understand the whole law of England—which no one ever did understand." In the same way, immediately you go into any district which has peculiar customs, though they be of a kind which the natives themselves hardly understand, you are supposed to understand and know them all. The old law, you see, did not allow for modern migration. In those days people, as a rule, were born, and lived, died, and were buried in the same parish.

In the year 1878 a Weights and Measures Act was passed which had for one of its chief objects the establishment of **a uniform system** of weights and measures throughout the United Kingdom. It also dealt with persons who kept false weights and false measures so to cheat their customers by giving false weight and false measure. At the present we will deal with the question of uniformity.

Now the whole weights and measures of the United Kingdom depend upon two weights and measures kept by the Government. There is a standard yard, a standard pound. The reader will ask how in the world measures of capacity are arrived at, if the only standards are a yard and a pound. I will show you presently. There is kept at the Board of Trade a certain platinum weight which is in the form of a cylinder 1·45 in. in height and 1·15 in. in diameter, with a groove or channel round it made in order that the weight may be lifted. Whenever this weight is lifted, it is lifted by inserting the points of an ivory fork in it. The cylinder was made in 1844, and weighs exactly one pound when weighed *in vacuo*—that is, not in the air, but in a chamber from which the air has been exhausted.

The standard yard is measured by taking the measurement between two pegs or pins which are inserted in holes made in a certain bar of bronze, which was cast in 1845 by Troughton Simms of London. And the measure is always taken with the bar at a temperature of 62° Fahrenheit.

Cubic measures or measures of capacity are obtained from the gallon. The gallon is arrived at by constructing a vessel that shall hold exactly ten pounds' weight of distilled water, weighed in air against standard weights, with the water and the air at the temperature of 62° Fahrenheit, and with the barometer at 13 inches.

Every single weight or measure in the country is derived from the standard yard, the standard pound, and the standard gallon. Thus a foot is a third part of a yard; an inch is one thirty-sixth part of a yard; a mile is 1,760 yards. In the same way with weights: you do not begin at the ounce or the grain and work upwards, you begin at the pound and work upwards and downwards. Thus a grain, which is the smallest weight known to our law, is one seven-thousandth part of the standard pound. A stone, in the same way, is fourteen standard pounds.

All weights are avoirdupois weights except (1) those used for the **sale of drugs by retail**: here the seller may—not must—sell by apothecaries' weights and measures; (2) those used for the **sale of gold and silver**, articles made of gold or silver, including gold and silver thread, lace, or fringe, platinum, diamonds, and other precious metals and stones. These may—not must—be sold by the ounce troy, or by any decimal part thereof. An ounce troy is $1\frac{17}{175}$ avoirdupois ounces—that is, 480 grains. Apothecaries' weight is nearly the same as troy; but the liquid apothecaries' weight, which is obtained by measuring the required liquid, is calculated on the avoirdupois basis. It should be said that the precious articles above named are always understood to be sold by troy weight unless otherwise agreed.

I can remember when there used to be two measures of capacity—one for **dry goods and one for liquids**. The dry goods were generally measured by the standard of the Winchester gallon. Now a gallon, a peck, a pint, and so forth are always the same, whether the thing measured be wet or dry. I have heard, though I have never seen it, that there are shopkeepers in remote parts of the country who still use some of these old-fashioned measures. They say that what was good enough for their fathers is good enough for them. All I have to say on that matter is that they had better not let the inspector of weights and measures catch them. If he does catch them they will inevitably be fined for being in possession of measures which do not conform to the imperial standard.

It ought to be noticed by shopkeepers that as far as selling things which are sold by measure may be concerned, it is **an offence to sell too much** quite as great as it is to sell too little. For the Act of 1878 is authoritative on the point that in using an imperial measure of capacity, the same "shall not be heaped." It must either be "stricken" with a round stick or roller—and this round stick or roller must be quite straight, and of the same diameter from end to end; or, if the article sold cannot be conveniently "stricken," it is the duty of the seller to fill it in all parts as nearly to the level of the brim as the size and shape of the article will admit.

This is an absolute **prohibition of selling by heaped measure**. I myself have seen it done; and I once spoke to a country hawker who sold me a pint of gooseberries. In the goodness of his heart, the hawker heaped the measure up until I should think he must have given me nearly a quarter of a pint more than I asked for; and when I told him that he was committing an offence against the Act of Parliament by giving me more than a pint of gooseberries when I asked and paid for a pint only, he laughed. There was nothing about my appearance to suggest to him that I had any right to speak with authority on such a subject; and when I explained to him that the Act of Parliament said that he must not heap up his measure when he sold by measure, his laugh turned to an expression of pity, and I fancy we parted company with him under a firm impression that I had escaped from a lunatic asylum.

The most important section of the Weights and Measures Act is the nineteenth section. So important is it that I shall give it to you verbatim,

and then proceed to explain it both by itself and as read with other sections of the same Act and various amending Acts.

"Every contract, bargain-sale, or bargain made or had in the United Kingdom for any work, goods, wares, or merchandise or other things which has been or is to be done, sold, delivered, carried or agreed for by weight or measure, shall be *deemed to be made and had according to one of the Imperial Weights and Measures* as ascertained by this Act, or to some multiple or part thereof, and if not so made or had shall be void.

"And all tolls and duties charged or quoted according to Weight or Measure shall be charged and quoted according to one of the Imperial Weights or Measures ascertained by this Act, or to some multiple or part thereof.

"Such contract, bargain, sale, dealing with the collection of tolls and duties as is in this section mentioned is in this Act referred to under the term trade.

"No local or customary Measures, nor the use of the Heaped Measure, shall be lawful.

"Any person who sells by any denomination of Weight or Measure other than one of the Imperial Weights or Measures, or some multiple or part thereof, shall be liable to a fine not exceeding 40s. for every such sale."

The first thing to be said about this section is that, although it is **intended to enforce uniformity** in the use of weights and measures, that is all that it is intended to enforce. Thus, if I sell to you a ton of hay, I, of course, deliver to you the number of pounds of hay which the Act says go to the ton, and those pounds must be pounds weighing exactly the weight of the platinum pound which is mentioned on p. 1335. Again, if I sell you a cart-load of hay at so much a ton, that is a sale by weight; and the hay must be weighed with weights of the imperial standard so that it can be ascertained how many tons there are in the cart-load.

But if I sell you simply a cart-load of hay for a fixed price, it is not a sale by weight nor by measure; it is simply a **sale by bulk**. The thing might easily happen in this sort of way: You come into my stack-yard and see a haystack; you survey it and measure it, probably in a rough-and-ready manner, its quality and so forth; then you offer me a sum down for the lot. I take that; and if you or I afterwards choose to weigh the stack as it is taken down, we can weigh it with any sort of weights we please.

Again, it is not illegal to sell a glass of beer—unless both the seller and the buyer understand that by the word "glass" is meant half a pint or some other definite measure. There is no necessity, therefore, to have stamped glasses which are used for the sale of liquids by the glass, except in the case of intoxicating liquors (*see* chapters on Licensing).

On the other hand, you may very easily run your head against an Act when you least intend to do so. For instance, there was a case in the 'nineties where a firm of smelters were in the habit of making lead into what are called pigs. When the pigs had been made each one of them was weighed in scales kept at the works. Then, if a purchaser bought lead, an approximate number of pigs were sent to him; an invoice was always

sent with the lead, and on it there used to be marked the weight. But this weight was not meant to be the exact weight. Sometimes the pigs were sent without weighing them at all; but the smelters knew quite near enough the weight of each one, and merely put down in the invoice a sort of guess weight. In other cases the pigs would be weighed on the scales or machines kept at the works. When the customer accepted the pigs sent, or some of them, he used to weigh those which he kept and send a note of the weight to the smelter and the railway company. Both the smelter and the railway company invariably accepted the purchaser's weights as correct. Now this machine kept by the smelter was unstamped—as I shall presently show you, the Act says that all scales and weighing machines must be stamped by an official—and the smelter was prosecuted for having in his possession unstamped scales. His answer was, "I do not use these scales for the purpose of trade within the meaning of the Act. That is, I do not sell the pigs of lead by the weight as recorded by these scales. I sell them by the weight as ascertained by the purchaser's scales." Asked why he kept scales under such circumstances, the answer given was that he kept them partly as a check on the railway company, and partly in order to satisfy himself what quantity of lead he turned out. It was, on these facts, decided that the scales were used for trade within the definition of trade contained in the nineteenth section set forth above. Mr. Justice Charles said, "The sixth section is that everything is trade which concerns the contract for the sale of goods by weight or measure."

Mr. Justice Wright said that if the smelter had merely used the scales in order to weigh the pigs of lead for his own satisfaction the Act would not have applied. But, you see, the weights had not merely been entered in the book of the smelter for his own benefit; they had been put upon the invoice which was sent to the purchaser, which made all the difference. Nor did it matter that the purchaser was allowed to correct these weights by weighing the pigs himself; because he would have been quite entitled, if he had chosen, to rely upon the weights specified in the invoice. It was, no doubt, a hard case; but when you have made a law you must abide by it.

The practical working of the Acts, so far as the Government is concerned, was placed in the hands of the **Board of Trade**, whose duty it is to make various weights and measures, which are called secondary standards, or Board of Trade standards. They have also the duty of testing according to their standards all weights and measures submitted to them by local authorities for use by the inspectors and officers of those local authorities. They have to make, also, all denominations of standards, and the Act of 1878 shows that the Board of Trade *shall* from time to time cause new denominations of standards to be made. Such new denominations are to be equivalent to, or multiples or aliquot parts of, the imperial weights and measures. That is to say, suppose there should be required by the growing requirements of trade some weight of some fractional part of a pound or gallon that has not up to that time been made by the Board of Trade. It

is the duty of the Board of Trade to cause such a weight or measure to be made. The only disadvantage about the section seems to be that although the Board of Trade is ordered to make new denominations of standards, there is no means whatever of compelling the Board of Trade to do anything of the kind.

The next duty to be noticed about the administration of the Acts is cast not upon the central Government but upon the local authority. Every local authority must appoint inspectors of weights and measures, and these inspectors must, when required to do so, **test all weights submitted to them, and they must stamp these weights**, if they come up to some recognised standard, with the denomination of the weight. The same applies to every measure of capacity, and to scales and weighing machines of all kinds. But it does not appear that a measure of length is to be stamped. This stamp is merely a stamp of verification or official stamp.

No inspector can be asked to put a stamp of verification upon a **weight made of lead or pewter**, unless it is wholly and substantially cased with brass, copper, or iron, and is marked "cased." Indeed, it would be an offence for the inspector to stamp a lead or pewter weight. But there is nothing to prevent him stamping a weight which has a plug of lead or pewter let into it that is really necessary for the purpose of adjusting it.

The *offences under the Weights and Measures Acts* are fairly numerous. I will first enumerate them, and then proceed to discourse about them.

- (1) It is an offence for anyone to use for trade a weight or measure which has no denomination of some Board of Trade standard.
- (2) It is also an offence for any person to have in his possession for use for trade, a weight or measure not of a denomination of some Board of Trade standard.
- (3) It is an offence to use for trade any weight, measure, scale, balance, yard, or weighing machine which is false or unjust.
- (4) It is an offence to have such a false or unjust article in one's possession for use for trade.
- (5) The next offence is that of using a weight made of lead or pewter or of any mixture thereof, and not substantially cased in brass, copper, or iron.
- (6) One of the most serious offences is wilfully to commit some fraud in the use of a weight, measure, etc.
- (7) It is also a serious offence wilfully or knowingly to make or sell a false or unjust weight, measure, etc.
- (8) It is also an offence to forge or counterfeit a stamp issued for stamping weights and measures.
- (9) Last of all, as far as our readers are concerned, and probably most serious of all cases—it is the most common offence that is committed—every person who uses or has in his possession for use for trade any unstamped measure or weight commits an offence.

Let me deal with these offences in their order. First let us take, by way of example, the offence of **having in possession or using for purpose of trade, a weight or measure not of the denomination** of some Board of Trade standard. It should always be remembered in this section that although the Board of Trade may not actually have made a standard measure or weight of a particular denomination, yet if you use a weight or measure which is either a multiple of an imperial weight or measure or an aliquot part of an imperial measure or weight you commit no offence. The reason seems to be that if the Board of Trade have not in fact made such a denomination, they ought to have made it. The case which illustrates this point best is the case of a certain publican of the name of Pow, who kept a public-house at Donedry, in the county of Somerset—a most appropriate place, apparently, for a public-house to exist. Now Mr. Pow's customers—some of them, at any rate—were in the habit of coming in and asking for "Three of Scotch," "Three of rum," "Three of gin," and so on. They meant thereby that they desired three-pennyworth of the liquid in question. Now three-pennyworth is not a measure known to the law. But as Mr. Pow's customers so very frequently asked him for three-pennyworth, he caused to be made certain measures, one of which he used for whiskey and rum, and the other for brandy, gin, and other spirits. For whiskey and rum a little pewter pot, which would hold one-third of a gill of spirit, and was marked on the outside with " $\frac{1}{3}$ -gill." But you understand that when Mr. Pow used this measure he never said, "I am selling you one-third of a gill of whiskey" or rum; he only used it when a customer came in and said, "I want three of whiskey" or "three of rum."

The vigilant inspector of weights and measures in the county of Somerset one day paid a visit to the public-house of Mr. Pow, and there espied this little pewter pot. He promptly took possession of it, and as promptly summoned the publican for "being in possession, for the purpose of the trade, of a measure which was no denomination of a Board of Trade measure." Now it was a fact that the Board of Trade had never constructed nor approved any measure of the denomination of one-third of a gill. There was a gill, a half-gill, and a quarter of a gill, but not a third of a gill. Pow had several defences. He said, first of all, that he was justified in selling by any aliquot part of an imperial measure. One-third is an aliquot part of a gill; a gill is an imperial measure. That was line of defence number one. The second line of defence was that he did not use, and did not intend to use, this measure for the purpose of selling anything by measure; which must have meant, if it meant anything at all, that if anybody had come in and asked him for a third of a gill of whiskey he would not have supplied it. He said: "I only use this measure when I am selling, not by quantity, but by value. I only represent to my customers that this pewter pot contains what I consider to be three-pennyworth of whiskey."

Most fortunately for the ingenious publican, one of the magistrates for that part of Somerset happened to be a Sir Edward Fry, who was once a Lord Justice of Appeal; and, as may be imagined, was a more competent

person to decide the difficult point of law than most unpaid Justices of the Peace. Sir Edward Fry said he could not hold that the measure did not purport to be a measure. It was quite obvious that it was intended to be regarded as a measure, because if not there was no earthly reason why it should be marked outside " $\frac{1}{2}$ -gill."

So that it was obviously intended to be used as a measure, and therefore the publican could not set up a defence that it was not intended to be used as a measure. But, said Sir Edward Fry, there is complete defence here in the fact that the measure is and purports to be an aliquot part of an imperial measure.

You will observe that the prosecution had elected to prosecute for the offence with which I am now dealing—namely, that of having in his possession a measure not of Board of Trade denomination. It is quite possible that if they had prosecuted Mr. Pow for another offence he might have been defeated—I mean the offence of having in his possession a measure that had not been stamped by an inspector or other person authorised to stamp measures. But when proceeding against a man for one offence, the authorities must stick to that offence, and cannot chop and change. The point upon which Pow's case is valuable seems to be that the Board of Trade have no absolute power to make a few measures which they consider sufficient for the trading community to use and confine the trading community to the use of those measures. But the Board of Trade ought to make all kinds of multiples and aliquot parts of the imperial measures.

Now you observe that the section says, "**for use for trade.**" What does that mean? I will show you one or two cases where it has been held to include almost every kind of dealing. Thus, in one case, Messrs. J. & F. Roberts, who were iron-founders, had a wharf at Swan Village. At this wharf they had a 120-lb. weight which had not been stamped. And when they were charged with an offence under the Act, they replied that they did not use this, nor was it in their possession for use for trade.

The way they used it was thus: When iron was landed at their wharf they checked the quantities that arrived as against the quantities named on the invoice, by weighing the iron on certain scales. The weight in question was the weight used. This weighing did not in the least affect the contract or the railways between Messrs. Roberts and the people who sent them the iron. It was merely gone through in order to check the amount of iron received from the carriers, so as to make sure that the railway or canal people had delivered all the iron which had been given to them to deliver. "In fact," said Messrs. Roberts, "we contend that use for trade means use in connection with the contract for buying and selling. Now this weight is not used in any weighing which is in connection with buying and selling or dealing with the iron. It is in effect the weight we keep to use for our own private satisfaction." But it was held that the weighing in the manner described was a performance which was a **part of a trade operation** and that therefore the weight was used for trade.

A rather queer case which shows the extensive meaning given to these

words "use for trade," was a case in which the Guardians of the Wycombe Union, or rather their relieving officer, had to submit to a prosecution for being in possession of a weight contrary to the Act. At that time the Guardians used to dispense part of the outdoor relief in the form of loaves of bread. These loaves they purchased from a baker who supplied daily the amount required. But as it never was known from one day to the next how much would be required, the baker used to take a cart full of loaves to the spot where the relief was dispensed, and give to the relieving officer as many loaves as that personage required, and the loaves were weighed by the officer upon a pair of scales belonging to the Guardians and not belonging to the baker. It was absolutely certain that this weighing was not used as a check on the baker; it was not a part of the buying and selling transaction between the Guardians and the baker. It was merely and solely a proceeding gone through in order to satisfy the paupers. It had been found that if you gave a pauper a loaf which pretended to be two pounds, he would very likely grumble and say that his loaf was short in the weight. In order to leave no shadow of excuse for this grumbling, the Guardians of the Wycombe Union instructed their officer to weigh the bread as he handed it to each recipient of relief. Nevertheless, it was held that the weight was used in trade; and although the judges said the prosecution ought never to have been brought, yet they felt bound to convict of the offences charged.

Another case which helped to decide what is meant by "for use for trade" is also useful as helping to show what a measure is. It is the case of a farmer in the country who had a contract to supply a milk-dealer in London with certain milk. This was to be sent up by the farmer in churns, and the churns were to be gauged; that is to say, they were to have marked on the inside lines at intervals, showing that if the milk reached a particular line the churn in question contained so many gallons. Thus the first mark towards the bottom of the churn showed four gallons, and then there was a series of marks, one for each gallon up to seventeen. The gauges were put in the cans not so much for the convenience of the customer in London as for the convenience of the railway company; because the railway company charged so much a gallon carried, and they used to look into the churn to see how much was in each one. You easily see that it was a great advantage to be able to tell by a rapid inspection how much milk they were carrying. If the churns had not been gauged the railway company would have had no protection except by measuring the milk themselves.

One day the farmer sent up several churns of milk to London, first of all measuring the milk in an imperial stamped measure as he put it in the churns. Now into all these vessels he ladled sixteen gallons each. Two of these were seized by an inspector of weights and measures at the station in London, and the inspector tested them. It was not alleged that he found less than sixteen gallons in each churn. What he did find, however, was that the churns were **wrongly gauged**—so that if you had simply filled

them up to the sixteen-gallon mark you would have had, not sixteen gallons of milk, but sixteen gallons less one pint. The farmer was summoned for having in his possession two measures, used for the purpose of trade, which were incorrect measures. He might have been summoned for having two unstamped measures, for neither of the churns was stamped. The worthy agriculturist pleaded in his defence that it was never intended to take these churns as a guide as between himself and his customer. And when his counsel appeared before the High Court in London to argue why he should not be convicted, one of them, Mr. Bosanquet, Q.C., argued that obviously the churns were gauged only for the purpose of having a rough measure; it was an unfortunate argument. Mr. Justice Wills, who presided over the court, promptly dropped on it. He said that the very object of the Act of Parliament was to enforce upon people accurate measures—not rough measures. He would be no party to frittering away a very useful Act of Parliament. There was no doubt that these churns were used for trade; if for nothing else, they were intended for the guidance of the railway company in the matter of amount to be charged for carriage. So the farmer, though he had committed no fraud, was convicted.

It has also been held that **beer-barrels** are measures; though, as a rule, the inspector takes no notice of them unless they are marked with the quantity they are supposed to contain.

The second offence to which I have to draw your attention is that of using for trade any **weight, measure, scale, balance, yard, or weighing machine which is false or unjust**. It is equally an offence to have a false or unjust article in your possession for use for trade. I mean that if you are found to have such a weight, measure, scale, etc., and the circumstances are such as to lead the magistrates to believe that you intend to use the same for trade, it is no defence for you to say that you have never used it for trade or for any other purpose. So that if you happen to have a pair of scales which is not true in balance you had better take it somewhere—take it to pieces, and lock it up until such time as you can send it back to the person from whom you got it. If you keep it exposed in your shop or warehouse, or other place of business, it will easily be presumed against you that you intended to use it.

Now, as the late Mr. Justice Stephen once took occasion to observe, the resources of evasion are endless. But you will probably find it difficult to drive a coach-and-six through this particular part of this Act of Parliament. The question that arises is what is meant by false or unjust. There was a case in which it was decided by a Court that if you have a weighing machine of any kind which may possibly, through atmospheric or other causes, go a little out of order, but the machine has some **self-adjusting corrective**, and an inspector comes along and examines the machine when it is out of order, he must, before prosecuting you, use the corrector so as to endeavour automatically to readjust the balance. The case was one in which the London & North-Western Railway was concerned. This great company had a machine upon which it weighed passengers' luggage and parcels. The

machine was liable, from atmospheric and other causes, to go wrong ; but it was a very beautiful piece of mechanism, and there was an apparatus kept with the machine, and forming part of it, which by the mere pulling of a handle would readjust the balance and make it quite correct. An inspector of weights and measures paid a visit to the machine and found it a little out of order ; but was told that if he pulled the handle, as everyone always did who wanted to use the machine, and found it out of order, he could bring it back to correctness. But the inspector did nothing of the kind. He prosecuted the railway company for having a false and unjust weighing machine in its possession ; and, as I have indicated before, he lost.

The Great Western Railway Company, in another case, was not quite so fortunate. At a certain country station there was a machine used for weighing parcels and passengers' luggage, which, as everybody knows, are charged for according to weight and distance. This machine was one of a fairly common kind, with a sort of platform upon which the thing to be weighed was put, and a dial with a pointer to show the weight. The dial had figures all round it, something like the face of a clock, beginning at zero and going up to 560lb. It befell that this machine got out of order, so that the handle which ought to have pointed to 0, when the machine was not in use, pointed to 4. Thus, if you put on the platform a parcel weighing twelve pounds the hand would indicate sixteen pounds. I am not saying for a moment that the Great Western Railway Company's servants ever committed any fraud ; they said, and one is bound to believe them, that they knew the machine to be out of order—that is, wrong to the extent of four pounds ; and when they weighed a parcel or luggage they always allowed that amount. Asked why they did not readjust the balance so that the indicator would point to 0 instead of to 4, the station master said that the machine was not an automatic self-adjuster or anything of that kind, but that somebody from the firm which manufactured it used to come round at frequent intervals and set the machine right. He himself could not mend the machine.

Upon these facts the Great Western Railway Company was convicted for having in its possession for use for trade a false and unjust weighing machine. It was all very well, said the judges, for the Great Western Railway Company's servants to resort to a mental process when they calculated the true weight of an article weighed by this machine. The railway company's counsel said, "Oh ! this never misled anybody. It was like having a watch which you knew gained so many minutes a day. The watch would not mislead anybody accustomed to its vagaries, because he would allow for the watch gaining." This account was rather an unfortunate illustration. The Court was not inclined to hold that a watch which kept time in a manner of Captain Cuttle's celebrated timepiece could be considered to be a correct watch. Suppose you had a law that a stage coach should have a watch, and you found a stage coach with a watch that was always ten minutes fast—"Could you," said one of the judges, "call that a correct watch ?" Of course not. Moreover, the argument on behalf of the company assumed that the Great Western Railway Company and its servants were thoroughly honest. That might be so ; but the Weights and

Measures Act proceeded upon the assumption that there are people who are not thoroughly honest, and in order to keep a check upon those persons it has been enacted that everybody, whether he is honest or otherwise, shall be punished if he is found in possession of a false or unjust weighing machine which he intended to use for trade. Justice Mellor remarked that it was no matter whether the person using the weights and measures was a small shop-keeper or a great company, he was equally bound to have them correct in either case.

The next case—and this, perhaps, touches the business of more persons than the railway cases—is that of a certain shopkeeper named Carr, who had his place of business at Tunbridge. An inspector went into his shop one day, and found three pairs of scales. Each appeared to be correct as it stood, but it had hanging upon the weight side of the beam a small, hollow brass ball, with a tap which unscrewed. This ball simply hung upon the beam by a stout brass hook, and in it was contained a quantity of shot. It appears that these brass balls with shot in them were used for the purpose of correcting inaccuracies which might arise in the scales. For the best-made scales do sometimes get out of order.

Taking the scales as they stood—that is, with the balls on them—it was found that they weighed quite correctly. But the inspector removed one of these balls, unscrewed the top, took out the shot, and then tried. He then found that the machine was untrue, and against the customer. One can quite easily see that in the hands of an unscrupulous person, this sort of adjustable scales could be turned to his own very great profit and to his customers' very great loss. There was nothing to prevent him, on a busy Saturday night—supposing he chose to take the risk of an inspector dropping on him—removing the shot from the hollow ball and giving each customer an ounce or so less than he paid for.

Mr. Carr was summoned for having in his possession, for use for trade, a false or unjust pair of scales. He pleaded that the loaded ball was **merely for the purpose of adjustment**, and that the inspector ought to have taken the scales just as they stood, with the ball on the beam, loaded, and tested them in that condition. "You had no right," he said, "to tamper with the scales first before you tested them." But the Court said that the hollow ball was no part of the scales proper. If you had some automatic or permanent part of the scales which adjusts inaccuracies (as in the case of the London & South-Western Railway Company), that was one thing; but if you had something not permanent and not automatic, but which you could take on and off at your will, and alter as you please at a moment's notice, then it was quite another thing. What was there to show that Mr. Carr had not seen the inspector coming and hastily hung the hollow ball on the beam? Wherefore it was found that the scales were unjust, and Mr. Carr was duly convicted.

The next thing to be noticed is the **practice of putting on scales something other than the weight** which is actually wanted to be weighed. Thus, you may want to weigh a sack of coals without taking

them out of the sack. You therefore put another sack of the same size and kind upon the weight side of the scales in order to counterbalance the sack in which the coals are. The question is whether this is legal. There was a case in which it was held that it was legal. But I want you to follow this part of the chapter very carefully, in order that you may know what is strictly within the law and what is not.

There was a man named Withall, a coal merchant, to whose yard went a man named Hodge to buy coal. Hodge had his own sacks, which were unequal in size and weight. The process was for the coal to be weighed in the sack as the sack was filled. Now, as a convenient way of carrying the sacks about, certain cross-pieces or wood called a barrow, but not unlike a hand ambulance, were used. Before the coal was weighed, each sack and the barrow were weighed separately. When the inspector of weights and measures went into the coal-yard this is what he found: There was upon one side of the weighing machine a barrow, and on it a sack full of coal. On the other side of the weighing machine was a five-pound weight and some other larger weights. The five-pound weight had been put on with the consent of Hodges, as representing the weight of the barrow and the sack. It was not hinted or suggested that Withall had been guilty of any fraud or cheat.

The inspector promptly prosecuted the coal merchant for having in his possession and using for trade an unjust weighing machine. It was admitted that the machine itself was quite correct. The injustice alleged by the inspector simply consisted in the fact that the barrow and sack were weighed with five pounds on the opposite side of the machine to counterbalance. The Court which heard the complaint would not convict, and the case came up to the High Court; and the High Court held that as the method of weighing above described had been resorted to with the consent of the purchaser, and as there had been no fraud, Mr. Withall was entitled to be acquitted.

The next case is a much more common case—namely, that a grocer should put a piece of paper on the weight side of his machine, in order to counterbalance the paper on the goods side of the machine. I mean that in some shops, if you buy a pound of tea, the grocer will put a piece of paper into each side of the scales, because, as he says, he does not wish to cheat you by making you pay for paper at the rate of tea. Now although this may be lawful enough in a case where for each separate customer a piece of paper is placed on the scales on each side, it is not lawful for the grocer to permanently affix on the weight side of the scales a piece of paper of the average size of the paper in which he weighs his goods. There was a case in which an inspector went into a grocer's shop and found a pair of scales with a piece of paper under one scoop. This piece of paper weighed some infinitesimal part of an ounce. He prosecuted the grocer for having in his possession a pair of unjust or false scales. And on appeal to the High Court the grocer was convicted. It could easily be seen that if the grocer had been a dishonest man he might occasionally have used that side of his scales not for the weights but for the tea. Then he would have been giving

the customer not full and generous weight of tea, but tea short in weight by the weight of this piece of paper.

My **advice**, therefore, to tea dealers, grocers, and others who sell in this way, is not to put any paper under the scoop. It may be fair and safe to put the paper on the scoop on each occasion when an article is weighed; but I think even this practice is dangerous. It is certainly risky to do it unless the customer assents to it. For the Court which decided the case of the coal merchant very carefully enunciated that a conviction ought not to be ordered, because the customer knew and assented to the way in which the coals were being weighed. The proper thing when you are asked for a pound of tea is to weigh the tea and then put it into the paper. There is no doubt that any other way is risky, and might subject you to a prosecution for using unjust scales.

The weighing machine is an **unjust** machine if it is, roughly speaking, **capable of being used unjustly**. What I mean is this. A man had a weighing machine which consisted of a sort of pan which rested on a spring. When anything was placed on the pan it pressed the spring down, and the weight of the article was indicated on a dial by an indicator. Now the machine was so delicately constructed that unless you placed the article to be weighed exactly in the centre of the pan, the spring did not act properly, and the correct weight of the article was not shown. It was held that this was a false and unjust weighing machine.

I am not aware of any prosecutions having taken place for **using a weight made of lead or pewter**, or a mixture of lead and pewter, and **not substantially cased in brass, copper, or iron**. No doubt the object of making this an offence is to prevent tampering with weights. One of the Model Regulations drafted by the Board of Trade for the better instruction of County Councils says that no lead weights, although cased in brass or other metal, shall be stamped; but this is a particularly absurd departmental mistake, because the Act itself simply says that a weight of lead shall not be stamped unless it is cased with brass, copper, or iron. Another one of the regulations, which seems equally absurd, is that the local inspector shall require every iron weight to have in it a plug of soft metal on which to impress the stamp. Here again the Act is at variance with the official mind; for the Act merely says that the mere presence of a plug of soft metal, put there for the purpose of impressing the stamp, shall not prevent the inspector from impressing the stamp.

I have no hesitation in saying that wherever these two regulations, which were used as models for bye-laws, have, in fact, been adopted as bye-laws by any County or Borough Council, the bye-laws are invalid. A bye-law can only be made for the better carrying out of an Act of Parliament: it cannot prohibit what the Act does not prohibit, nor allow what the Act does not allow. Thus it would be quite in order to say, by a bye-law, that the plug and soft metal to be used in any weight, for the purpose of impressing the stamp thereof, should not be more than one-third of the whole surface of the weight—that would be in order as a bye-law. But when it is pretended

to make a bye-law prohibiting the use of the official stamp for verifying weights unless those weights have plugs of soft metal in them, that the Act says nothing of the sort, is, as lawyers say, "*ultra vires*." It is, in fact, trying to make a new law—and no Government Department has any power to make a new law—that is the prerogative of Parliament alone. In the same way, a bye-law to the effect that any leaden weight cased with brass, copper, or iron should be cased to the thickness of, say, one-eighth of an inch, might be valid, because it is only a regulation for enforcing the law that a leaden weight must be substantially cased in one of the other metals. But it is absurd for any inferior body to prohibit the use of leaden weights cased with the harder metals when the Act of Parliament positively allows them to be used. I have not the pleasure of knowing who provided these Model Bye-laws for the Board of Trade. It may have been the work of a door-keeper in his spare time: it certainly was not the work of anyone with the slightest pretension of being a lawyer.

The offence of **wilfully committing a fraud** in the use of any weight, measure, scale, balance, steel-yard or weighing machine renders the man who commits it, or any and everybody else who assists him, liable to a fine of £5 for the first offence and £20 for the second offence. These are, of course, the maximum fines. They may be mitigated to suit the circumstances of any particular case. At one time the fine was the only punishment which could be inflicted for a fraud of this kind. The offender might be sent to prison if he would not or could not pay the money; but that was the only case in which he could be imprisoned. By the Weights and Measures Act of 1889, however, if the Court by which the offender is convicted of a second or subsequent offence of this kind is of opinion that the offence was deliberately done with intention to defraud, the **offender may be sent to prison**, with or without hard labour, for two months. This is, without giving him the option of a fine.

Fine and imprisonment are not the only punishment for fraudulent use of weights, measures, etc. The weighing instrument, weights, measures, balances, scales, and steel-yards with which the offence is committed may be ordered by the magistrate to be forfeited. This, of course, may be a very serious matter, because some weighing machines are costly things. Every kind of instrument for weighing is included in the term "weighing instrument."

Another offence in which the state of mind of the person who commits the offence is taken into account is that of **wilfully or knowingly making or selling false or unjust weights, measures, etc.** A case once arose under this section which illustrates what is meant by false or unjust. A man sold a pair of scales of a very ordinary kind—that is, with pans on each end. It was found by an inspector that if you left the pans in the right ends the scales weighed correctly; but if you changed the pans it was incorrect. These scales were returned to the manufacturer with a note of the defect, and he exchanged them for another pair in respect of which his shopman wrote out a warranty that they were just and true. It turned out that the second pair was just about as bad as the first. The manufacturer was prosecuted, and he was convicted of having wilfully sold an unjust scale.

You see, a *scale with movable pans*, which pans may be used at either end, ought to be so constructed that it makes no difference into which end either pan is put. It does not require any very great acuteness to see what a long, wide avenue would be opened up for fraudulent practices if a grocer were allowed to have in his shop a pair of scales with movable pans so constructed that if he put the left-hand pan at the right-hand side of the scale, and the right-hand pan at the left-hand side of the scale, the customer would go short of several ounces of goods that he paid for.

The last offence of a substantial kind (other than offences which arise in the way of trying to resist the inspector, and so on) is the offence of **having in your possession for use or using a weight, measure, scale, and so on, that is unstamped**. Now I wish to point out to you, first, what the stamp must be; secondly, how to get the stamps put on; and thirdly, what will happen to you if you use or have in your possession for use weights and measures, scales, etc., which are not stamped properly.

To begin with, it is the duty of every Borough and County Council to have made what are called LOCAL STANDARDS of weights and measures. The local standard is, in effect, similar to the Board of Trade standard. Thus, the Board of Trade have certain standard measures for a pint, half a pint, gill, and so on; it is the duty of every local authority to have their measures made exactly corresponding with those of the Board of Trade. In order that these weights and measures may be kept exactly correct, it is provided that every local standard weight must be verified by the Board of Trade at least once every five years, and every measure must be verified in the same way at least once every ten years. A frugal Council which does not wish to go to the expense of sending all its weights and measures to London so often, may fulfil its duty by merely sending one standard of each kind to the Board of Trade for verification. For instance, take a large county in which there are ten Weights and Measures districts, each with its inspector, who is obliged to have all the local standards, this means that the County or Borough Council must make ten standards of each kind of weight and each kind of measure. Now suppose the Council wishes to re-test or re-verify all these, it can send up to the Board of Trade one of each kind, and then take the other nine with the one returned by the Board of Trade as correct to a Justice of the Peace, who compares the nine with the one and issues a certificate of correctness if the nine correspond with the one.

This provision may not, perhaps, seem very important to the shopkeeper or the merchant; but it is. I have known it to happen that when an inspector has been asked in the witness-box, "When did you last verify the pint measure?" he has been compelled to answer that his local standard pint has not been re-verified for the last ten years. And in such a case the accused gets off; for a local standard cannot be used—it ceases to be a local standard for testing measures—if it has not been re-verified within the proper time.

I have mentioned something about the county being divided into **Weights and Measures districts**. It is the duty of every local authority charged with the administration of the Weights and Measures Acts to divide

its area into districts, and it must appoint, to take charge of each district, an inspector of weights and measures. And by way of identifying the districts more easily, each district must be distinguished by a number or letter. You might see the county of Oxford divided into six Weights and Measures districts, numbered 1, 2, 3, 4, 5, 6. So you might have the county of Worcester divided into six districts distinguished by letters *a, b, c, d, e, f*. Each inspector must be furnished with the local standards. He must also be furnished with stamps with which he can impress a mark of verification upon the weights and measures submitted to him. This stamp must show not only the county or borough for which the inspector acts, but it must also show the letter or number of his district.

It is also the duty of a local authority (by which I mean a County Council for a county and a Borough Council for a borough) to affix and notify, by public notice, certain times and places for the testing of weights and measures. At these times and places an inspector for the district must attend with the local standards and the verification stamp. He must then and there examine every weight and measure submitted to him by any person residing within his district. He must not take any notice whatever of applications made to him by people from outside his district; if he does, he is liable to be fined.

If you want your weights or measures or weighing machines tested, all you have to do is to take them with you to the place fixed by the local authority, at the time fixed by the local authority. There you will find the inspector, who is obliged by law to test your weights and measures. He is also obliged by law to stamp them as correct if they are correct according to the local standards which he has with him. If it is a measure which is submitted to him, he must stamp it with the stamp showing the number or letter of his district. So he must also if it is weight of a quarter of a pound or over. Weights less than a quarter of a pound need not be stamped with a number or letter. Furthermore, he must, if you ask him, give you a certificate that he has examined certain weights or measures and found them correct; and whether you ask him or not, he must keep a book in which he makes an entry of every weight and measure submitted to him for examination.

Now I wish to say that although by law the local authority is bound to give facilities for testing weights and measures, yet it is **no excuse for you**, legally, if you use measure or weight which has not been tested or stamped, to say that the local authority did not give you any facilities for having such weight or measure stamped, etc. What I mean by this will best be illustrated by a case which actually occurred.

One Taylor, a brewer of Yorkshire, sent a barrel of beer to a customer. On this barrel were the words, "T. Taylor, 35 gallons." An invoice was sent the next day to the customer, on which it was stated that there had been sent to him a barrel containing 35 gallons of beer at 10d. a gallon. An inspector of weights and measures got hold of this barrel, and found that it held only 33 gallons. He also found that the barrel had not been

stamped with the verification stamp by any inspector of weights and measures. The brewer was summoned for using for trade an unstamped measure. His defence was that the County Council of Yorkshire did not provide any facilities for the testing and verification of barrels; therefore it was quite impossible for him to have had this barrel stamped. But the Court held that this was no defence in law. It seemed just a little hard on the brewer that this should be so; but the Court had no doubt whatever about it.

Now, a weight or measure that has been duly stamped by an inspector is a legal weight or measure, not only in the district where it was stamped, but anywhere in the United Kingdom. What I mean is that **the stamp is good anywhere** in the United Kingdom. If you move your place of business you need not have all your weights and measures re-stamped. Of course, this does not protect you if it should turn out that your weights and measures are false or unjust.

In addition to the verification stamp imposed by the inspector of the district, there are **certain other stamps** which must be put on by you or by the manufacturer for you. *Every weight*, except where the small sizes render it impracticable, must have the denomination of the weight stamped on the top or side thereof in legible figures and letters. There seems to be no definition of "legible"; but I should imagine it means the weight must be so marked that if a customer or an inspector takes it up, he can read for himself, without the aid of a magnifying glass, and without possessing any skill in deciphering hieroglyphics, the exact denomination of the weight. A *measure of capacity*, such as a gallon, pint, etc., must have the denomination stamp outside in legible figures and letters. There is no requirement as to *measures of length*. And the Act provides that an inspector must refuse to put a verification stamp upon any weight, or measure of capacity, which does not bear the denomination legibly written thereon as above stated.

There was a case in which it was contended, on behalf of the public authority, not only must a weight or measure be stamped, but that if the stamp had worn off the proprietor must **get it re-stamped and re-verified**. In this case a shopkeeper had a two-pound iron weight with a copper plug. An inspector going into his shop one day examined this weight, and found that it bore no verification mark. He summoned the shopkeeper. But the son of the defendant proved that two years before he had taken the weight in question to the inspector, along with three others, and had actually seen the inspector impress them all with a stamp. An assistant in the shop swore that the weight had certainly borne the stamp once. And it was suggested that the plug being of a softer metal than the iron, it got worn away and so the stamp had been effaced. The justices believed the shopkeeper's son and the assistant, and refused to convict the defendant for having in his possession an unverified weight. And the Court of Common Pleas upheld the decision of the justices, and in effect decided that there was **no** necessity to have the weight re-stamped.

We have now to consider what are the **POWERS OF INSPECTORS** with

reference to the infringement of the Weights and Measures Acts. An inspector is at all times **entitled to enter the premises** where he has reasonable cause to believe that there is any weight, measure, scale, balance, steel-yard or weighing machine which he is authorised to inspect. Before he can make any such entry, however, he must have a warrant, in the hand of a magistrate—or sheriff, or sheriff's substitute, in Scotland; in Ireland he need not have any warrant.

And here we have the difference between this Act and the General Law. By the General Law it is illegal for any constable or officer to use what is called **a general warrant**. By "general warrant" I mean a warrant which authorises him not to seize a particular person or to enter a particular place, but to enter any place where he suspects something or somebody to be, or to arrest somebody without specifying him by name. In a very famous case in the eighteenth century, a certain Secretary of State had issued a warrant to an officer to search for and seize the author of that famous newspaper, No. 45 *North Briton*. The officer obeyed his order, and did enter some place or other, and did seize the reputed author of No. 45. But he lived to rue the day. An action was brought against him for trespass; and when he pleaded in defence that he had acted under a warrant from the Secretary of State, it was pointed out that this warrant was not a warrant to arrest John Jones or William Smith, but a warrant to arrest whosoever the peace officer should say was the author of No. 45 *North Briton*. The result was that the unfortunate officer was mulcted in heavy damages; and it was established as a fundamental principle that a general warrant is absolutely illegal.

But under the Weights and Measures Acts a warrant issued by a magistrate to an inspector of weights and measures, authorising him to enter the premises where he suspects weights, measures, weighing machines, etc., to be, may be general. The point was decided in a case which arose under the old Weights and Measures Act of 1835. The section of that Act has now been repealed; but it has been in effect re-enacted in the Weights and Measures Act, 1878, so that the old case is still good law.

A certain magistrate granted a warrant on December 2nd, 1840, to an inspector of weights and measures for the county of Middlesex, empowering him "at all reasonable times to enter all shops, houses, and premises whatsoever within his jurisdiction," and to require the production of weights and measures, and to test the same. One Reeves, by virtue of this authority, on the 30th of August, 1841, entered a beer-shop kept by one Hutchins, demanded to see his measures, and seized and carried away three pewter pots which were used for measuring beer. These pots were unjust measures.

Hutchins promptly brought an action against Reeves and Reeves's assistant for trespass. They pleaded that they were authorised to do what they did, because they held the magistrate's warrant. The publican then objected to the warrant as being bad. "First," he said, "the warrant is bad because it is in general terms, and does not contain any authority to enter the premises of Hutchins by name. Secondly," he said, "the warrant is bad because

the assistant had no warrant of any kind, and therefore had no business to come on my premises at all."

But the Court decided that the warrant was good. They said that the Act of Parliament had expressly empowered such a warrant to be issued in this particular kind of case. The Act says that the inspector may enter the premises "at all reasonable times." This implies that the warrant is to be a continuing warrant, and not a warrant used in respect of one particular case and one particular occasion. The judges of that day were not very much in the habit, when they set to work to construe an Act of Parliament, of considering the public convenience. They were a very hard-headed, very learned race of lawyers—far more acute in mind, and far more learned in the law, than the lawyers and judges of these days. It was no part of their business or their duty—as they interpreted their duty—to consider whether the decision upon an Act of Parliament would have good results or evil results; nor did they consider it here. At the same time, it is a very good thing, for the administration of the law, that they decided this case in the way they did decide it. Imagine what it would be to administer the Weights and Measures Acts if every time a weights and measures inspector wanted to enter a shop to look at the weights and measures and weighing machines he were obliged to go to a magistrate and get a warrant entitling him to enter that particular shop by name—which seems to show that even a beneficial rule of law may have a beneficial exception to it.

Another point of practice. When a person is appointed inspector of weights and measures for a particular district, he is taken before the magistrate, who gives him a warrant, signed, to go about in that district, practically anywhere he likes, to look for and inspect weights and measures. The inspector may not only enter buildings of all sorts, but may enter open-air premises—for example, fairs held on commons and village greens.

When the inspector has entered the place where he suspects unjust weights, measures, and weighing machines to be, he is entitled to inspect and call for all those which are used for trade, or are in your possession, or on your premises for use for trade. I have already shown you on pp. 1341-2 what is meant by "use for trade." Inspection is, of course, for the purpose of seeing whether the weights, measures, etc., are stamped with a proper verification stamp. An inspector may go on to compare the weights and measures with the imperial standards—or, rather, the local copies thereof which he has in his possession. If he finds any scales or weighing machines unjust, or any false weights or measures, he may seize and detain them until the hearing of the summons which he will probably take out against the person in whose custody or possession the weights were found.

Perhaps shopkeepers will be more interested to hear what are the **precise powers of an inspector who comes into the shop**. Has he any right to walk in in the fashion that he does, and say, "I want to see your weights and scales and measures"? And the answer is that he has the right. If you have your doubts as to who he is, or anything of that kind, you may **request him to produce his warrant**; and he is bound to produce it.

If he has not got his warrant with him, you are not bound to produce your weights and measures for his inspection. A heavy penalty awaits the persons who shall have the temerity to neglect or refuse to produce for inspection such things as the inspector calls for. He may call for "all weights, measures, scales, balances, steel-yards, and weighing machines in your possession or on your premises."

I wish you particularly to notice the word "all." You are to understand that the inspector cannot seize or forfeit any weights, measures, etc., except such as are used for trade, or in your possession or custody for use for trade. But he has the right to call for and inspect all weights, measures, etc., in your possession or on your premises, whether they are there for use for trade or not. If you refuse to permit him to examine the same, or any of them, or refuse to produce them for his inspection, or obstruct his entry to the place where you keep the weights and measures, you will be liable to a fine not exceeding £5 for the first offence and £10 for the second offence.

An interesting point occurred in a case where the inspector of weights and measures entered a dairy, and asked the man he saw there for the various measures. Now **the owner of the dairy was away**, and the man whom the inspector saw was only a labouring man employed on the dairy, who had been asked to come into the shop and take charge until his master returned. The labouring man, whose name was Webb, flatly declined to produce the measures for the inspector's inspection. He was summoned for his contumacious conduct. His defence was that the measures were not in his possession or on his premises. Clearly they were not on his premises, because the premises were the premises of the master. Whether they were in his possession or not was another matter. One side said that possession meant what the law knows as possession; and to a lawyer, if a servant is in possession of anything for his master, the possession is the possession of the master and not of the servant. Suppose, that is to say, you give your servant a shilling to go and buy half a pound of tea for you. She buys it, and has it in her hand. In the popular sense, she may be said to be in possession of the tea; but a lawyer would say that she was not in possession of the tea, but that her master was in possession of it. The defendants of this case contended that possession meant custody or control.

It was rather a hard nut to crack, and eventually the judges compromised. They said that although it might very well be that a servant whose business it was to be in charge of the dairy might be said to be in possession of the weights and measures there, yet a man in the position of Webb, who was simply sitting in the place to see that things were not stolen and to take any messages that anybody liked to leave, could hardly be said to be in possession of anything in the shop. Therefore he was not in possession of the measures which the inspector demanded to see; therefore he could not be convicted of refusing to produce measures in his possession.

When you take your weights and measures to be tested by the local inspector, **you have to pay certain fees** to him. I give the list of those fees at the end of this chapter. It is rather curious that although the

local authority gets the benefit of these fees, the local authority has no power to abolish them. There was a County Council not long ago which decided to discontinue charging fees for the testing and verification of weights and measures. They thought they would pay the inspectors out of the general rate. This was by way of encouraging small tradesmen to come and have their weights and measures tested frequently. But an unsympathetic and legally minded auditor of the Local Government Board, who came down from London to audit accounts of that County Council, surcharged the County Council with the amount of fees that ought to have been received. An appeal to the High Court only resulted in the auditor's account being confirmed; and it was decided, therefore, that the fees in question must be charged. No discount can be given; but just as the local authority must charge fees as specified by the Act of Parliament, so also it is the law that they must not charge more than the fees specified in the Act of Parliament.

By the Weights and Measures Act of 1889 power is given to the local authority which prosecuted for offences against the Weights and Measures Acts to publish, in whatever manner they think fit, **the record of any convictions** that are obtained against people guilty of offence against statutes. My own view is that if one could adopt the plan suggested by the great Bentham, and publish, at the offender's expense, every conviction for having in one's possession an unjust or false weight, measure, or weighing machine, and especially if this could be done by a placard in big letters posted on the shop window of the offender, we should soon find a very great diminution in the number of offences committed against the Weights and Measures Acts. Of course, this would press rather hardly upon the person who may be called a permanent tradesman as against the itinerant hawkers. And, unfortunately, it is the itinerant retailer who is the worst offender in this respect.

It is **a good defence** to a prosecution under the Weights and Measures Act for selling an article in any vessel which is not of the imperial standard to prove that the vessel was not represented as containing any amount of imperial measure; and when you are prosecuted for being in possession of a vessel, either unstamped or not of imperial measure, it is enough for you to show that this vessel was not used nor intended for use as a measure. This applies to cases where you sell something not by the pint but by the glass, or by the bottle, or cask, unless such bottle, or glass, or cask has some mark on it which indicates that it does contain a particular measure. I would warn you, therefore, that this section does not apply to the sale of intoxicating liquor by retail.

By the Weights and Measures Act of 1889 the Board of Trade has power to construct standards, not only for the measuring of length and cubic capacity and weight, but also for the measuring of electricity, temperature, pressure, or gravities. These standards are intended to meet the new developments of electricity, working by gas, and so forth.

By recent legislation **the metric system** has been legalised as a standard for weights and measures. There are many people who believe that the metric system ought to be made compulsory, in order to bring the

United Kingdom into line with the other nations of the world. But, probably owing to the very great expense that would be caused to traders if they were compelled to discard their old weights and measures, Parliament has merely enacted that people may, if they please, use the metric system. Since the metric system has not been adopted to any extent in the country, I do not think it necessary to waste my limited space by giving any description of it.

You may also, if you choose, use decimal subdivisions of imperial weights and measures, not necessarily metric weights and measures, without being guilty of an offence against the Weights and Measures Acts.

Schedule of Fees to be Charged by Inspectors for Testing Weights and Measures.

Avoirdupois :				WEIGHTS.		£	s.	d.
Each weight of	100 lbs. (cental)	...	...	...	...	0	0	4
"	"	"	56 lbs. and 28 lbs.	...	...	0	0	3
"	"	"	14 lbs. and 7 lbs.	...	...	0	0	2
"	"	from	4 lbs. and 1 lb., inclusive	...	...	0	0	1
"	"	"	8 ozs. to $\frac{1}{2}$ dram, inclusive	...	...	0	0	$0\frac{1}{2}$
"	"	"	4,000 grains to $\frac{1}{100}$ th of a grain, inclusive	...	...	0	0	$0\frac{1}{2}$
"	"	"	240 to 24 grains, inclusive, commonly called pennyweights	...	...	0	0	$0\frac{1}{2}$
Troy :								
Each weight from	500 ozs. to 100 ozs., inclusive	...	...	...	...	0	0	4
"	"	"	50 ozs. to 10 ozs., inclusive	...	...	0	0	2
"	"	"	5 ozs. to $\frac{1}{100}$ th of an oz., inclusive	...	...	0	0	1
Apothecaries' :								
Each weight from	10 ozs. to 1 oz., inclusive	...	...	...	...	0	0	2
"	"	"	4 drachms to $\frac{1}{2}$ grain, inclusive	...	...	0	0	1
Length :				MEASURES.				
Each measure from	100 ft. to 7 ft., inclusive	...	...	...	...	0	0	3
"	"	"	6 ft. to 4 ft., inclusive	...	...	0	0	2
Each measure of a yard,	2 ft., foot, and inch respectively, including their subdivisions	...	...	...	...	0	0	1
Measures from	0.5 to 0.001, in form of wire gauge plates :							
For each notch, or for each internal gauge or separate size, from half an inch to $\frac{1}{1000}$ th of an inch	...	...	...	...	...	0	0	$0\frac{1}{2}$
Capacity :								
Dry and liquid measures :								
Each measure of	4 bushels (32 gals.) and 1 bushel (8 gals.)	...	...	...	...	0	0	6
Each measure from	5 gals. to 2 gals. (peck), inclusive	...	...	...	...	0	0	3
"	"	"	1 gal. to $\frac{1}{4}$ gill, inclusive	...	...	0	0	1

Subdivided liquid measures from 32 gals. to 1 gal. (by £ s. d.

Order in Council, 21st March, 1890):

Each measure above 1 gal. containing not more than six subdivisions 0 1 0

Each measure containing more than six subdivisions, but not more than twelve 0 1 6

Each measure containing more than twelve subdivisions ... 0 2 0

Apothecaries':

Each subdivided measure containing not more than twelve subdivisions 0 0 1

Each subdivided measure containing more than twelve subdivisions, but not more than fifteen 0 0 1½

Each subdivided measure containing more than fifteen subdivisions, but not more than eighteen 0 0 1½

Each subdivided measure containing more than eighteen subdivisions, but not more than twenty-one 0 0 1¾

Each subdivided measure containing more than twenty-one subdivisions, but not more than twenty-four 0 0 2

Each subdivided measure containing more than twenty-four subdivisions, but not more than thirty 0 0 2½

Each subdivided measure containing more than thirty subdivisions, but not more than thirty-six 0 0 3

Each subdivided measure containing more than thirty-six subdivisions, but not more than forty-two 0 0 3½

Each subdivided measure containing more than forty-two subdivisions, but not more than fifty 0 0 4

Each subdivided measure containing more than fifty subdivisions, but not more than one hundred 0 0 6

Each subdivided measure containing more than one hundred subdivisions, but not more than one hundred and fifty 0 0 9

Each subdivided measure containing more than one hundred and fifty 0 1 0

WEIGHING INSTRUMENTS

For 10 tons and above 0 10 0

Under 10 tons and above 1 ton 0 5 0

1 ton and above 5 cwt. 0 2 0

5 cwt. and above 1 cwt. 0 1 6

1 cwt. and above 56 lbs. 0 1 0

Exclusive of cost of cartage and lifting of standards in each of the above cases.

56 lbs. and above 14 lbs. 0 0 6

14 lbs. and above 1 lb. 0 0 3

1 lb. or under 0 0 2

CHAPTER II.

THE LAW OF WEIGHTS AND MEASURES AFFECTING SPECIAL TRADES.

Section i.—THE COAL SELLER.

Section ii.—THE BAKER.

Section iii.—THE LICENSED VICTUALLER.

Section iv.—MISCELLANEOUS TRADERS.

SECTION I.

THE COAL SELLER.

Coal must be sold by weight—May be sold in bulk occasionally—Coal over two hundredweight—Delivered in vehicle—Cart to be weighed—Coal ticket—What it must contain—"Correct weight"—What the words mean—Difficulties of enforcing Act—Ticket to be delivered to purchaser—May be given to purchaser's servant—Object of ticket—Ticket may be sent in advance, or with first cart—Not after coal delivered—Procedure where several cart-loads or more than one delivery—Time and place for filling in ticket—Charged with wrong offence—Coal sent in sacks—Weight in each sack need not be stated—Sacks need not be all alike—A dilemma—Ticket to be signed—Trade name or real name—"Co-operative Coal Co."—The fine for not delivering ticket—Servant also liable—Dishonest carters—Coal—Vehicle to be weighed on demand—Who may demand it—Expensive suspicions—Shops where coal sold and delivered must keep proper weighing machine—Sales of two hundredweight or less—Local authorities to make bye-laws—Must be reasonable—A bad bye-law—A good bye-law—Weighing machine with cart—Inspector's right to enter premises—To stop coal carts—To weigh coal—Representation of weight of coal—Liability of master for servant's representation—*Sample of weight ticket*—SCOTS LAW—in burghs—Account or memo. to be sent with coal—Contents thereof—Re-weighing coal—Request of constable or purchaser—Less than half a ton—When bound to keep weighing machine—Coal-hawkers—LONDON—London Coal Act—Coal to be delivered in sacks—Re-weighing—Course of Procedure—Small quantities to be weighed.

ONE thing, apparently, cannot be sold in bulk—that is coal. All coal must be sold by weight, and by weight only

The only *exception* to this is that if any coal proprietor makes a contract for selling coal to be delivered direct from the colliery into the works of the purchaser, he may sell it at so much the load, at so much the wagon, or so much the tub. But even in this case it is necessary to have the written consent of the purchaser. It works out in this way: if the purchaser has works, which means that he must be a manufacturer of some sort, he may buy a boat-load or so many trucks at so much a boat-load or so much a truck; but the coal must in that case, as I read the Act, be loaded straight into the boat or wagon or tub, or direct from the colliery itself, and taken in the boat, truck, or wagon to the purchaser's works. The reason for the exception is the convenience to **big traders** who require for fuel in their works very large quantities of coal, and who

have found it highly inconvenient to have the coal all weighed before it is loaded into the boat or railway truck. The colliery proprietor who had to weigh the whole boat-load of coal or a dozen trucks of coal before he despatched them to be delivered in bulk would have to employ a great many extra workpeople, and he would have to put up the price of the coal to the manufacturer in order to meet his own extra expense.

The law as to the sale of coal in the ordinary way is divided into two parts. The first is concerned with sales of quantities exceeding two hundredweight, and the second with sales of two hundredweight or less. Let us first consider what must be done by **the trader who sells any quantity of coal exceeding two hundredweight**. He will, of course, deliver the coal in some sort of vehicle. He may load the coal into sacks, or he may simply load it into a vehicle in bulk. Now if he loads it into the vehicle in bulk (I am assuming that the vehicle belongs to the coal merchant and not to the purchaser) he must first cause the vehicle to be weighed. It must be weighed on a weighing instrument stamped by the inspector of weights and measures, such instrument being at or near the place from which the coal is brought.

Thus, take the ordinary case of a coal merchant who buys his coal in trucks or boat-loads. There ought to be in the railway station or siding, or goods yard, a machine built for the express purpose of weighing horses and vehicles; and on this machine the coal cart ought to be weighed. Moreover, it is in the power of any local authority (*see* p. 1349) to provide at a convenient place weighing instruments for the purpose of weighing coal and coal vehicles; and an inspector of weights and measures, or other officer appointed for the purpose, has a right to require the coal merchant to have his vehicle weighed by some weighing instrument that has been duly stamped.

Continuing our illustration of the coal merchant: he is selling, let us say, two tons of coal that is loaded into a cart at the coal merchant's yard. The vehicle is weighed first; then the coal is weighed, and on the ticket, with which I shall presently deal, the coal merchant must write a statement of the correct weight of the vehicle. If both the vehicle and the animal drawing it are weighed together the weight of both must be stated on the ticket; and the weight of the coal contained in the vehicle must also be stated. If the coal merchant fails to have his vehicle weighed and to give a ticket containing all the particulars which I have stated, he is liable to be fined £5.

The statement on the ticket must be the correct weight of the vehicle (or vehicle and animal, as the case may be), and the penalty of £5 is for not giving the correct weight. But **correct weight** means the weight as ascertained by the weighing instrument which is "on or near to the place from which the coal is brought." Of course, that machine must be one duly stamped. It is of no avail for the inspector who thinks he has made a capture to re-weigh the vehicle at some other weighing machine. Let me show you what I mean. There were some people called Knowles & Sons, Limited, who appear to have been dealers in coal. On December 29th, 1896, an assistant

inspector of weights and measures saw a cart of Knowles & Sons, Limited, with coal in bulk. He followed it to a house, where the coal was unloaded. He saw at the same time a ticket delivered by the carter to the purchaser of the coal. Mr. Assistant Inspector went up to the purchaser and asked to be allowed to look at the ticket, explaining who he was. The householder allowed him to see the ticket, where was a statement that the horse and cart weighed 29 cwt. Mr. Assistant Inspector thought he would test the truth of this statement; so he led the horse and cart to a weighing machine at the railway station and there weighed both animal and vehicle. He found the combined weight to be $28\frac{3}{4}$ cwt., or a difference of 28 lbs. between the ticket weight and the weight as registered by the railway station machine. You observe that the difference here was not in favour of Messrs. Knowles & Sons, but in favour of the purchaser of the coal; for if the purchaser of the coal on receiving the ticket had caused the coal to be weighed he would not have been able to say that it was 28 lbs. short, the mistake would have been that the weight of horse and cart were understated. The justices who heard the complaint convicted Knowles & Sons, Limited, but stated a case for the opinion of the High Court.

The High Court said there ought never to have been a conviction; not, you observe, because the difference was in favour of the purchaser, but because, for anything that had been shown to the contrary, the correct weight of horse and vehicle as shown by the stamped machine of Messrs. Knowles, Limited (on which the horse and cart had been weighed in the first instance), had been stated upon the ticket. "The weight inserted in the ticket," said Mr. Justice Hawkins, "must be **the correct weight as ascertained by weighing at the place from which the coal is sent.**" You see, it was just possible either that the railway weighing machine was wrong or that Messrs. Knowles & Sons' machine was wrong. But it had not been proved which of them was wrong. There was no evidence to show that Messrs. Knowles had not weighed the horse and cart on a correctly stamped machine before the coal was sent out. Nor was there any evidence to show that the weight issued by their machine had not been correctly marked upon the ticket by Messrs. Knowles & Sons.

I confess I do not know very well how this particular section of the Act is to be enforced in face of the decision I have just set out. Possibly if the inspector had led the horse and cart back to Messrs. Knowles & Sons' yard, and had there weighed both horse and cart upon the machine which Messrs. Knowles & Sons had previously used for weighing the same, he would have been able to have obtained a conviction—if the weight as then ascertained did not correspond with the weight as set out on the ticket. It would, of course, be possible for an inspector to be stationed at the exit from a coal-yard. He might then stop any coal-cart which came out with coal loaded in bulk.

(NOTE.—By coal in bulk I mean coal not in sacks, or tubs, or anything of that kind, but simply thrown into the cart loose.)

He might then ask the driver whether he was going to deliver this coal, and where, and if he had a ticket. If the driver were to say he had a ticket,

then the inspector would ask him to hand it over for inspection. Suppose such ticket declared the weight of horse and cart to be 30 cwt., the inspector might take the horse and cart back then and there and have the whole thing re-weighed. But nobody would be convicted or punished for anything if such a course were adopted, because the offence consists in delivering to the purchaser of the coal the ticket containing incorrect particulars. So you see, upon the hypothesis that the cart is stopped immediately it issues from the coal-yard, the ticket has never been delivered to the purchaser. Or, again, the ticket might have been sent by post beforehand. I do not question the correctness of the decision in Knowles's case, nor do I for one moment allege that Messrs. Knowles were guilty of any offence, either legal, moral or otherwise. I only say that the decision in their case is a little unfortunate for the public interest; because it is not difficult to see that cases might arise where the seller had in fact been guilty of cheating, but could not be convicted because of the decision above mentioned. For instance, the decision would have gone exactly the same way if instead of the weight of the coal-cart having been under-stated by 28 lbs. it had been over-stated by 28 lbs.

As you will see from the preceding case, there is **an obligation** in certain cases upon the seller of coal **to give a ticket** to the purchaser. Now the obligation is not only to give the tare weight of the vehicle and horse when the coal is sent in bulk, but there is also a duty cast upon the seller in other cases where coal is sent to a purchaser to **send a ticket showing the weight** of the coal delivered. This applies when the coal is sent in sacks or in bulk, provided the whole quantity is more than 2 cwt.

The law is that a ticket shall be delivered stating the weight of the coal when it is delivered to the purchaser in any vehicle. I will give the salient points of the section in numbered paragraphs:

- (1) The coal must *exceed two hundredweight*.
- (2) It must be *delivered by means of a vehicle* to the purchaser.
- (3) The seller of the coal must deliver, or cause to be delivered, or send by post or message, *a ticket or note* to the effect of the one which later I shall set out. This ticket must be either delivered with the coal or sent beforehand; it must reach the purchaser's hand before any part of the coal is unloaded.
- (4) It is not necessary that the purchaser shall have the ticket given to him. *It is enough if it is given to a servant*. For, of course, it would be almost impossible to deliver coal at the house of a business man, if you had to either send the ticket to him before he left for business in the morning or after he came home in the evening.

You will observe that the object of this section is to enable the purchaser to protect himself from being cheated by having his coal weighed. The coal-carter comes to the house; he hands in a ticket stating, "Here-with you are to receive two tons of coal." Now if the purchaser has any

suspicion that he is being defrauded, he can request the carter to come with him to a public weighing machine, or else request the carter to weigh the coal himself upon the scales he carries upon the cart; and so insure that correct weight is delivered. Besides this, it is intended that the public officer—the inspector of weights and measures, or whatever other person has been appointed for the purpose—shall be able to exercise his office for the public protection. Such an inspector or officer may go to the carter and ask if he has the ticket or note; if he has, and the officer asks him to produce it, he must produce it and let the officer look at it, under pain of being liable to a fine of £5.

There can be no doubt that this part of the Weights and Measures Act has been found somewhat irksome by dealers in coal. Whether or not it has conduced to honest weights in that commodity to any very great extent I am not in a position to say. There have been one or two attempts made to break down, as it were, the letter of the Act; but this has not met with a very great amount of success. It is for me only to point out to people who deal in coal what they ought to do to satisfy the Weights and Measures Act in this regard. In the first place, suppose you are delivering to a customer a considerable quantity of coal in many carts, and are perhaps making several journeys, **you ought to deliver a ticket either before any coal is sent** or else the ticket with the carter who is in charge **of the first cart** that arrives. Perhaps a case that has actually occurred will enlighten the reader upon this particular point.

James Slatter, who was an agent for the Cannock Chase Coal Company, had contracted with a Mrs. Roberts, of Broad Campden, Gloucestershire, to sell to her a truck-load of coal at sixteen shillings a ton, such price to include delivery of the coal to her at her premises. Mrs. Roberts was a retail dealer in coal, which perhaps accounts for the price. Slatter sent the truck to a station two and a half miles from Mrs. Roberts's place, and there was obliged to employ carts actually to deliver the coal to his customer. He employed three carts; but as the distance was considerable and there were six tons five hundredweight of coal in the truck, these three carts had to make two journeys each to accomplish the delivery. While the men were shovelling the coal into Mrs. Roberts's place, the eagle eye of Mr. Stangoe, an inspector of weights and measures for Gloucestershire, fell upon them. "Have you any weight ticket?" he inquired. "No," replied one of the men; "our gov'nor always sends the ticket with the last load."

Sure enough, on the second journey, with the last half of the coal, one of the carters brought a ticket which was in this form:

"Mrs. Roberts,

"Take note that you are to receive herewith of coal,

6 tons 5 cwt.

@ 16/- = £5

"Name of carters, A. Eden, J. Gardner, J. Turvey."

Mrs. Roberts appears to have been perfectly satisfied with the weight of the coal as stated upon the ticket, namely, six tons five hundredweight,

Nor was it ever proved, nor has it been proved to this day, that the weight was less than that quantity. But the inspector of weights and measures, acting no doubt by the instructions of his superiors, summoned Mr. Slatter for violating the provisions of the Weights and Measures Act, 1889, by not delivering with the first three cart-loads of coal a ticket in the proper form. Slatter pleaded that the sale of coal to Mrs. Roberts was a sale of a whole truck-load, not of six cart-loads. He argued that he was only bound to send a ticket "therewith"; that he had sent it "therewith"—that is, with the truck-load. "You might as well expect," he said, in effect, "when I sell coals by the ton, and deliver these coals in sacks, to have a separate ticket for each sack, as expect me, when I sell a truck-load, to have a separate ticket for each cartful."

But this argument, though ingenious, did not succeed. He did, as the Act says, deliver by means of a vehicle to a purchaser certain coal. He ought to have delivered with the coal—which really means with each vehicle that contains the coal—a ticket. As Lord Russell of Killowen pointed out, if you had to wait until the last lot was delivered, you, the purchaser, would have lost your chances of weighing the coal; for it could never have been intended that if you wanted to weigh your coal you might be obliged to take it all out of your cellar in order to have it weighed.

There ought to have been a ticket with each cartful—or, at all events, one ticket for the whole sacks or cartfuls—stating the total weight. For my part, I am unable to see why the Acts were not summarily dispensed with upon the very simple ground that the Act says the ticket or note must be delivered **before any part of the coal is unloaded**; this question indicates that you cannot put a single shovelful of coal into your customer's premises unless you have delivered the weight ticket beforehand. It is quite clear that Mr. Slatter's man had delivered three whole cartfuls to Mrs. Roberts before any ticket was delivered; so that they clearly came under the words, "before any part of the coal is unloaded."

As to the **time when the ticket must be filled up**. It appears that the weighing of vehicle and coal may take place at any time before the delivery; and the ticket may be filled in then. Messrs. Purnell & Co. had a contract with the Devon County Asylum to supply coal, and the contract was that the coal was to be weighed at a weigh-bridge on the asylum premises. A carter was to take with him a book of forms of tickets perforated with a counterfoil like a cheque-book. One day a carter was sent with a load of one and three-quarter tons; he had the vehicle and coal together weighed by the stock-keeper at the asylum on the weigh-bridge mentioned. He then requested the stock-keeper to fill the weights in on one of the tickets, which ticket the carter afterwards tore out of his book and handed to the proper person. The ticket contained all the proper particulars.

Yet Messrs. Purnell & Co. were prosecuted for not having delivered a proper ticket to the purchaser before any of the coal was unloaded. They escaped; and I think it very likely that if they had been prosecuted for

not causing the coal and vehicle to be weighed by a weighing instrument on or near to the place from which the coal is brought, they would have been convicted. But the beauty of our law is that if you prosecute a man under one section of an Act of Parliament when he is guilty of an offence under another section, the man gets off simply because you have prosecuted him for the wrong offence.

I have already stated that when you send more than two hundredweight of coal to a customer you must deliver with each vehicle a ticket stating the weight of the coal sent in that vehicle—unless, that is, you send with the first vehicle (or by post beforehand) a ticket containing the weight of the whole amount to be delivered. But there is no need, when you sell more than two hundredweight of coal and deliver it in sacks, for you to mention on the ticket **the weight of coal in each sack**. Nor is there any reason why you should send sacks of equal weight of contents.

Thus a firm called D. Radford & Co. sold two tons of steam coal to Messrs. Rice & Co. They sent the coal in twenty sacks, and their carter took a note or ticket as required by the Act of Parliament. This note was in the following terms :

"Messrs. Rice & Co., Finner Street.

"Take notice that you are to receive herewith two tons of steam coal in twenty sacks, each containing two hundredweight.

"January 22nd, 1896. Herewith delivered to the purchaser.

"(Signed) D. Radford & Co., Sellers."

When the carter had delivered eleven of the sacks to Messrs. Rice, an inspector of the London County Council came along. He weighed the remaining nine sacks, with the result that he found seven of them to be deficient in weight to the extent of eighty pounds in all, and two of them to contain ten pounds more than two hundredweight. It was proved, however, that the twenty sacks taken together contained two tons. The inspector took out a summons against Messrs. Radford. The coal merchants defended themselves in this way : If you treat the sale of two tons as one sale, then no offence has been committed. The proper weight of the coal delivered was stated on the ticket as required ; and although it is quite true that the ticket says "twenty sacks, each containing two hundredweight," yet that particular part is mere surplusage. It need not have been there ; and for all legal purposes must be considered not to have been there. The County Council took the view that each sack was a separate sale, just as I have pointed out to you, in the case of the sale of milk, that each can of milk is a separate sale for purposes of the Adulteration Acts. They said, in effect, that they could have prosecuted Messrs. Radford by seven summonses for seven different offences, one for each sack that was deficient in weight. But the magistrate hit the nail on the head at once. He said to the County Council, "You are on the horns of a dilemma. If this is a sale of each

separate sack, then you cannot prosecute at all; because no ticket need be delivered unless the sale is of more than two hundredweight. On the other hand, if the sale is a sale of more than two hundredweight then it must be only one sale for the whole two tons; and as the correct gross weight was stated on the ticket, the ticket is correct, and no conviction can take place in respect of it." The London County Council applied to the High Court; but the judges of the High Court perceived that the magistrate had neatly spiked the prosecution upon one or other horn of the dilemma aforesaid, and concurred in the view that Messrs. Radford were entitled to be acquitted.

If you look at the form of ticket given at the end of the section, you will see that **the ticket ought to be signed**, or at all events ought to bear the name of the seller. The question is, **What name?** Not very long ago a person named Cameron, who traded as "The Co-operative Coal Company," was charged with an offence against this part of the Weights and Measures Act—the offence being that he did not put his name on a coal ticket. It was true he did not put the name of Cameron, but he put the name of the Co-operative Coal Company. The prosecution said that this was not enough; but the judges of the High Court would not listen to such an argument. Mr. Justice Channel remarked that by English law a man had a right to trade under any sort of name whatsoever that he chose; and there was nothing in the Weights and Measures Acts which would alter the law in that respect. And if he might trade under any name he liked, surely he ought to conduct every transaction in connection with his business under the name in which he traded. It was not pretended that there was any difficulty in getting at the address of the Co-operative Coal Company. In fact, Mr. Cameron said that if the name "Cameron" had been on the ticket, it would have been misleading to the authorities rather than otherwise, because they would not have been able to find in the directory his business address under the name of Cameron. So that, although, no doubt, a man who carries on business under a trade name will comply with the law if he signs a coal ticket with his real name, yet he equally complies with the law if he signs it with his trade name.

If the note or ticket is not delivered or sent to the purchaser as the Act requires, the seller of the coal is **liable to a fine not exceeding £5**. So also is he liable to the same fine if the quantity of coal delivered is less than the quantity expressed in the ticket or note. Not only can a seller of coal be punished in respect of the ticket offences, but also the person attending on the vehicle by which the coal is carried. By way of protecting not only the customer but the coal merchant, it is enacted that if a coal merchant gives to his servant a ticket or note for delivery to the purchaser, and the servant or carter does not deliver it as the Act requires, he shall be liable to a fine not exceeding £5; **the servant is also liable** to a fine of £5 if he does not show the ticket to the inspector of weights and measures or other officer appointed for the purpose by the local authority.

In like manner, the person actually in charge of a vehicle carrying coal may

be punished by a fine of £5 if he wilfully makes a false statement as to the tare weight of the vehicle. The same penalty may be inflicted on him if he does any act by which to defraud—that is, either the coal merchant or the customer. The last-mentioned provision is intended as a wholesome check on certain practices that have sprung up, so I am told, very extensively amongst men who are employed to cart coal. A coal merchant once informed me that he had discovered one of his carters to be in the habit of selling perhaps a sackful, perhaps more, of coal to somebody for a few pence every time he took a load of coal out—the coal in question being taken from loads of coal which the carter was sent to carry to customers. Thus, being sent with two tons of coal to Mr. Jones, this dishonest servant would stop at the house of some acquaintance on the way and for a few pence—enough to buy a pint or two of beer—take a hundredweight or so from the cart and bestow the same on his acquaintance. If that carter had been prosecuted, he would be liable under this Act to a fine of £5. He would also be liable to be sent to prison for larceny.

Any person interested in the sale of coal has **the right to require** that any **coal or any vehicle** used for the carriage of coal in bulk **shall be weighed** by some weighing instrument which has been duly verified and stamped.

If the coal or vehicle has already been weighed it may be re-weighed ; and the person who is entitled to demand weighing or re-weighing is a seller of coal, the purchaser of coal, a person in charge of a vehicle in which coal is carried, an inspector of weights and measures, or any other officer appointed for that purpose by the local authority.

This means that if a man goes to a house with a cart-load of coal, the customer or an inspector of weights and measures may come and request him to take the coal and vehicle to some weighing machine and have it all weighed. But you cannot ask the man to carry coal more than half a mile ; and the distance may even be lessened if the local authority makes a bye-law to that effect.

Suppose you, being the purchaser of coal, and having some suspicions of the honesty of your coal merchant or his servants, have taken the trouble to compel the person in charge of the vehicle to have the coal weighed. You have made him go a quarter of a mile and made him lose some considerable time about the matter. You have had a ticket delivered to you in the usual form, stating that the weight of the coal was so much and the weight of the vehicle so much. When you have had the load and the vehicle weighed, you find that the coal merchant was in the right and your suspicions were unfounded. Not only will you have the annoyance of feeling that you have in some sort cast a reflection upon the honesty of a person who did not deserve it, but you will have the pleasure of paying all the reasonable costs actually incurred of and incidental to the weighing. That is to say, you will have to pay the charges of the person in charge of the weighing machine where the process was gone through, and also a proper amount in respect of the wages of the coal merchant's man whom you have kept standing idle while you amused yourself, and in addition some charges also for having had the use of the vehicle during the time it took to have the same weighed.

What I am about to tell you now affects really the sale of coal in small quantities, but except in instances where I actually mention the fact the law has not any express terms limited to sales in small quantities.

It is compulsory for every person who **sells coal by retail for delivery at the place where it is kept for sale** to keep a proper stamped weighing instrument, unless there is at or near such place some other properly stamped weighing instrument erected by the local authority or somebody else. This is really intended to apply to sales of coal in small quantities, where the customer goes to the shop and takes it away himself, as is done in poor localities sometimes. The seller must, if he is asked either by the inspector or by the customer, weigh the coal before he sells or delivers it. And any person selling coal who does not keep a weighing machine when he ought to keep one, or refuses to weigh coal when asked to do so, is liable to a fine of £2 for the first offence and £5 for a subsequent offence.

The next point upon which I have to speak is strictly confined to the sale of coal in small quantities ; for it refers to sales in quantities of **not more than two hundredweight**. The offence is that of **fraudulently** delivering to the purchaser a less quantity of coal than is agreed to be sold. You observe the word "fraudulently." And I must ask you to notice that as the offence is not committed unless it is committed fraudulently, it is for the prosecution always to prove the fraud. By which I mean that it is not enough for the inspector to prove that the coal merchant delivered to the purchaser less than he agreed to sell : he must further prove that the coal merchant did it with intent to cheat. Of course, if he can prove that the coal merchant knew that he was delivering less than he agreed to deliver, that is the very strongest evidence of intent to cheat.

Local authorities charged with the administration of the Weights and Measures Acts (*see* p. 1349) may make bye-laws to regulate for the purpose of the Acts the sale of coal in quantities not exceeding two hundredweight. Such **bye-laws must be reasonable**, as all bye-laws must be. They may require that if the coal is sold in bags the bags shall be marked with the weight ; but they cannot require, for example, that the seller of coal shall weigh or re-weigh it on being requested to do so by any police constable. There is nothing to prevent a police constable being appointed an officer for the purpose of the Act, so long as one and the same police constable is appointed. But no Corporation or County Council has the right to make a bye-law such as the Corporation of Blackburn made. They made a bye-law that any vendor of coal in small quantities not exceeding two hundredweight in charge of a vehicle carrying such coal for sale within the borough should re-weigh the coal on being asked to do so by any purchaser or by the inspector of weights and measures, or *by any constable*.

There was a hawker named Platt, who went down one of the streets in Blackburn one day with a cartful of coal in bags. The inspector of weights and measures went up to him and said to him, "Weigh that bag," pointing to one. "No," said Platt, "I won't." "Do you mean that you will not weigh a bag of coal?" the inspector inquired. "No, I will not meddle with them"

answered the hawker. Such absolute contempt for the majesty of the law took the inspector's breath away. As soon as he recovered it he hastened to make a complaint to the magistrates, and prosecuted that hawker for breach of the Borough bye-laws. But not only had Platt the courage to defy the inspector, he had the obstinacy to try a fall with the whole Corporation. He contended that the bye-law was powerless because it was unreasonable; and on being beaten in the Court below he took the case to a higher Court and had the matter decided there. What is more, he won. There is a tendency in these days to enforce the bye-laws of municipal corporations rather than to upset them. It was not always so, but it is to-day the fact that his Majesty's judges will not hold a Corporation bye-law bad for unreasonableness unless it is very unreasonable. However, the Blackburn bye-law was a good deal more than the judges could stand. "Imagine," said they, "what would happen if, as might happen, every police constable whom this miserable hawker met had asked him to weigh a bag of coal. Why, the poor wretch would not be able to carry on any business at all." As this might be the consequence under the bye-law, and as this consequence would be such a hindrance to trade as to be utterly unreasonable, the bye-law was bad.

The local authorities may also require **a weighing instrument** of a form approved by the local authority **to be carried with any vehicle** in which coal is carried for sale or delivery to a purchaser. They may either say that all coal-carrying vehicles shall carry a weighing instrument, or they may confine the bye-law to certain specified classes of cases. Thus, they may say a certain instrument shall only be carried where coal is delivered in sacks, or they may say that a weighing instrument shall only be carried where coal is delivered from vehicles in quantities of less than half a ton or any other quantity; and, of course, they may impose a penalty not exceeding £5 for the breach of any such bye-law. A bye-law under this part of the Act, which said simply, "every vehicle carrying coal for sale or delivery shall carry therewith a weighing machine approved by the County Council," was held to be good. I mean that the bye-law need not specify the form of the instrument. And if you have a bye-law in such general terms as these operating in your district, you must, of course, have had the weighing instrument approved by the inspector of weights and measures.

I now come to a section of the Act under which there are a considerable number of prosecutions annually. It is a provision which was also meant for the protection of the poorer class of customer who buys in small quantities. But it is not in terms limited to any particular quantity. Any **inspector of weights and measures** or officer appointed for the purpose **has the right to enter** any shop or building or other place (*e.g.* coal-yard or station-yard) where coal is sold or kept or exposed for sale, and in addition to testing the weights and weighing instruments may weigh any load, sack, or other less quantity of coal which he finds there. The inspector or officer may also **stop any vehicle** which is carrying coal for sale or for delivery; may test the weights and weighing instruments, if any, and may weigh either the whole load, or any sack, or any less quantity which he finds in the

vehicle. He may also weigh, if he likes, any sack of coal or other quantity which is actually being carried into the customer's house and is therefore not in the vehicle.

The sting in this is that if the coal so weighed turns out to be less than the seller or carter (as the case may be) represented it to be, the person making the representation may be fined £5. Perhaps one of the most important questions that arises under this part of the Act is as to how far a representation of a servant is the representation of the employer.

Coal merchants will appreciate what I say when they read the following cases. A retail coal merchant had certain coal brought to his premises in sacks. These sacks were weighed in the presence of the merchant's servant. The servant said they were correct. The sacks were not emptied, but were left just as they had been delivered, and when somebody ordered coal from the retailer, the retailer sent so many bags just as he had got it himself. The merchant in this case having received the order for five hundredweight of coal, told his servant to deliver it. The servant took five sacks. He said that to the best of his belief each sack contained a hundredweight. While on his way to the customer's house, an inspector of weights and measures stopped him and asked what was the weight of the coal in the cart. The servant replied, "Five hundredweight." The inspector took the load to a weighing machine, weighed the sacks, and found there was less than five hundredweight. Then a summons was issued against the man, on the ground that he had represented the load to be more than it really was. Nevertheless, the High Court did not take that view. It said that the representation of the servant was not the representation of the master for this purpose.

But it does not follow that because the master was not the person stopped by the inspector therefore he cannot be convicted of making a representation under this section. The label on a sack, if put there by the master or by his agent authorised to do so, is a representation by the master of the weight of the coal. Thus, if an inspector stops a barrow with five sacks of coal in it, and finds that each sack has marked on it with chalk "1 cwt.," and weighs a sack and finds it deficient, he can prosecute—not the man who was wheeling the barrow, but the employer who put the weight on the sack or caused it to be put on.

For a representation may be made in any manner whatsoever. There are people who think that nobody is liable for a misrepresentation unless he makes it actually in so many words—*e.g.*, "How much coal is there in that sack?" Answer, "One hundredweight." It is, however, a clear representation to all whom it may concern that a sack contains 1 cwt. if it is so marked in chalk. And the master in the case mentioned in the last paragraph has clearly represented to the inspector—a person empowered by law to make enquiries and take action—that his sacks contain 112 lb. of coal apiece. And clearly, as he is to blame, he ought to suffer. It is not always the guilty one who is punished, such are the imperfections of the law; but as a rule it is true to say that he who has erred is liable, and not his innocent agent.

WEIGHT TICKETS OR CONSIGNMENT NOTES ON DELIVERY IN ANY VEHICLE OF
COAL OVER 2 CWT.

(See pp. 1361-2.)

I.

(Where the coal is sold in sacks.)

To Mr. A. Bawnes.

Take notice that you are to receive herewith ^{Tons cwt.} 2 10 of coal,
in 25 sacks. each containing ^{cwt.} 2.

Charles MacBart (Seller).
Carter, William Heaver.

II.

(Where the coal is sold in bulk.)

To Mr. A. Bawnes.

Take notice that you are to receive herewith ^{Tons cwt.} 2 10 of coal.

	Tons cwt. lbs.		
Weight of horse and coal and vehicle ...	3	18	10
Tare weight of horse and vehicle ...	1	8	10
Net weight of coal herewith delivered	}	2	10
to the purchaser ...			

Charles MacBart (Seller).
Carter, William Heaver.

IN SCOTLAND.

In burghs the regulations for the sale of coal are not quite the same as they are in England. The law that all coal shall be sold by weight (except only when with the written consent of the purchaser it is sold by boat-load, or waggons, or tubs delivered from the colliery into the works of the purchaser) is the same in both countries; but the rest of the law as given above is not quite the same.

To begin with, the English law treats of coal in quantities of less than two hundredweight and quantities over two hundredweight. The Scots law, as administrated in the burghs, treats of sales of half a ton and upwards and of less than half a ton. The local authority is empowered to provide at convenient places weighing machines, and attendants whose duty it is during the prescribed hours to weigh every cart or carriage presented to them for that purpose. A keeper of a public weighing machine having weighed a cart or carriage, must enter the contents or load of the cart, its

gross weight, the tare weight, and the time of weighing, together with the number of the cart or such other particulars as shall identify it.

The local authority may also provide at convenient places movable machines for weighing coal. To these machines the inhabitants of the burgh have access to weigh coals at their own expense. The chief constable or any other officer appointed under the Act may require coals offered for sale or delivery to be re-weighed, and to require the driver to produce the ticket. No charge can be made for such re-weighing.

When anybody sells half a ton or more of coals he must give the carter or person in charge of them an **account or memorandum** similar to the one set out above. The paper must specify the tare weight of the cart or carriage and the *true weight and price of the coals*, and the exact time the cart or carriage left the premises of the seller. If anybody sends out coals of half a ton or more without giving the proper ticket he is liable to a penalty of twenty shillings for each offence; and it seems to be a separate offence if on making out a ticket the seller omits any one particular or states it wrong. Thus, if the ticket does not specify the true tare weight of the cart, that is one offence; if it does not specify the true weight of the coals, that is another offence. Note that except in Scottish burghs the *coal-ticket need not state the price*—only the weight.

The carter or other person in charge of the coals must show the ticket to any police constable who asks to see it. He must also deliver the ticket immediately on his arrival at the place of delivery. It is not actually necessary for him to hand it to the purchaser himself, if he hands it to an inmate or other person in charge of the house or place of delivery. **Failure to exhibit the ticket** when demanded by a constable or to deliver it immediately on arrival at the place of delivery is an offence for which the penalty of twenty shillings may be imposed. And each offence, again, is a separate offence.

A **driver or person in charge of the cart** must, if he is asked by a constable, take the cart to a public weighing machine. He must also take it to a weighing machine if the purchaser asks him to do so. And when he gets there he must assist in weighing the cart and the coals under penalty of forty shillings. If the owner or driver having charge of a cart or carriage which is to be weighed tampers with the carriage, or does anything to increase the weight of what is to be weighed, he is liable to a penalty of £5 or to be imprisoned, without the option of a fine, not exceeding sixty days. It is punishable in the same way for anybody knowingly to alter the tare or weight, or ticket, or to abstract any coal after the same was originally weighed.

The retailers of coal who sell it in **quantities of less than half a ton** at a yard or other place where coals are kept, or from a cart or carriage, are obliged to keep scales and weights or steel-yards of the legal standard. They must keep these machines within the yard or place where the coals are on sale, and also adjusted to the cart or carriage used for the sale of such coals. The scales and weights or steel-yards must be capable of

weighing the coals. The dealer is not obliged to weigh the coals unless he is asked; but he may be asked either by the purchaser or by any officer of police. It is an offence (a) not to have proper scales and weights and steel-yards, (b) to refuse to weigh the coals if lawfully asked. For the first offence the dealer may be fined forty shillings, and for every subsequent offence £5.

There is another section of the Burgh Police Act which deals with the **man who hawks coals**—that is, who sells it in small quantities from a cart or carriage. I take leave to say that it is a most sensible proviso. It only applies where the quantity sold or delivered does not exceed two hundred-weight, and where it is sold from a cart or carriage. In such a case the seller must keep his coals made up in bags or boxes. He must label each bag or box so as to indicate the weight contained in each bag or box. If he disobeys either of these requirements he is liable to a penalty not exceeding forty shillings for each offence. Of course, such a person, as he sells coals in quantity of less than half a ton, is also bound to carry with him on his cart, waggon, etc., proper scales, weights or steel-yards, and can be required at any time to weigh any quantity of coals that may be bought from him. It works out in this way: The purchaser, let us say, orders two hundredweight of coals, and a man comes up his stair with a bag labelled "2 cwt." Should he think that the quantity looks rather small, the purchaser can say to the man, "I want you to weigh this." The man is bound to comply, and he is bound to have on his cart some proper machinery for weighing the coals. If it should turn out that the amount is less than that represented on the sack, the dealer can be prosecuted.

IN LONDON

there is a certain amount of law with reference to the sale of coals which does not exist in the rest of England. To begin with, all coal, cinders, culm, and cannel, also coke, must be sold by weight and not by measure. The Act goes on to say that anybody who knowingly sells one sort of coal for another is guilty of offence, and will have to pay the penalty at the rate of £10 a ton, but so that he shall not be fined for more than twenty-five tons in respect of the same offence. This applies where, for instance, I order Welsh steam coal and the dealer supplies me with Scotch coal. I would observe that this offence can be punished under the Merchandise Marks Acts, by which a false statement as to place of origin is punishable by a heavy penalty (*see* p. 716). I ought perhaps to remark before going further that the **London Coal Act** applies to coal sold or delivered within twenty-five miles from the General Post Office, including London City and its port and the city of Westminster.

Coal sold in any quantity exceeding 560 lbs. must be *delivered to the purchaser in sacks*, which must contain in net weight either one hundred-weight or two hundredweight. There are exceptions to this rule. The first is that coals delivered by gang labour may be conveyed in sacks containing

any weight. If the purchaser likes, he may have his coal delivered in bulk, in carts or carriages, lighters or barges. But in the second case the weight of the cart as well as the coals must be previously ascertained by a weighing machine situated on the wharf or other premises from which the coal is brought and must be stated on the ticket. The penalty for not weighing the cart and coals is a fine not to exceed £50.

Whenever coal of more than five hundredweight is carried in bulk the purchaser, or any person acting on his behalf (for example, the purchaser's wife or servant), may request the carman or driver to have the **waggon or carriage and the coals weighed** at some public weighing machine for carts. This weighing machine must be situated on the road between the place from which the coals were brought and the place of delivery. If there is no weighing machine actually on the road the purchaser may request the driver to proceed with the cart to some spot not more than a hundred yards from the road. The penalty for refusing is £10; but the driver cannot be compelled to weigh the cart without the coals until he has delivered them, nor to go back to a public weighing machine after he has passed it. On all carts, etc., laden with coals for sale or for delivery, the carman must carry a perfect weighing machine marked at the Guildhall, London, by the proper officer. The machine is not a proper one unless it is properly adapted to the weighing of coal, and unless it has proper weights. If you have a weighing machine properly stamped by an inspector of weights and measures you need not have them stamped at the Guildhall. They are correct for this purpose so long as they are not false or unjust.

There are also very stringent provisions as to weighing coal carried in sacks. The driver of the cart on which they are carried is bound, if required by the purchaser, to weigh one or more sacks with the coal in it. And he must also afterwards weigh the sack—the same sack—without any coals in it.

It is necessary, if anybody tries to recover a penalty under this section, for the procedure laid down in the section to be strictly followed. Thus, in one case, a man sent four tons of coal—at least, the ticket said four tons—in forty sacks of two hundredweight each. The purchaser pointed out a sack and demanded forthwith to have it weighed. The weighing was done in this fashion: the 2 cwt. weight was put on the weight side of the scales, together with a sack, and the coals in the sack selected were put on the other side of the scales. Upon this weighing it was found that the weight was deficient. Afterwards all the sacks were weighed in the same way, and all were found to be deficient. The purchaser brought an action to recover penalties under the Act; but it was successfully objected that the provisions of the statute had not been complied with, because the statute says that first of all the coals and sack must be weighed together, and afterwards the *same* sack must be weighed empty.

If you wish to proceed under this Metropolitan Act, **your proper course** is to first of all point out a sack or two and require them to be weighed in the manner I have indicated—first sack and coals together and then sack

without coals. If you find any deficiency you must summon a police constable or some "indifferent and credible person"—in other words, some neutral person who has no interest in the matter—and in his presence have the whole load weighed. The constable or neutral person may do the weighing if you like, or you can make the carman do it. If it is found that the sacks do not contain either one or two hundredweight, as the case may be, the seller is liable to a penalty not exceeding £5 for the sack; and you can bring an action against him to recover £5 a sack for every sack short in weight.

As to coal sold in **quantities of less than five hundredweight** at a time, the seller is bound to weigh it before he delivers it. He can weigh it if he likes before it leaves his place of business; and he must re-weigh it in the presence of the purchaser, or his agent, or servant, if required to do so. The penalty for sending out small quantities less than five hundredweight without weighing them is a maximum of £5. And the same penalty may be inflicted if the seller or dealer refuses to re-weigh the coals when asked.

Any quantity of coal exceeding five hundredweight delivered by a cart, or waggon, or other carriage, must be accompanied by a ticket in the form which I have given in another place. Under this Act the ticket cannot, apparently, be sent beforehand by post. It must be delivered immediately on the arrival of the cart, and must be sent with the cart containing the coals. Moreover, it must be delivered to the purchaser, his servant, or agent, before any coals are unloaded. It was once decided that if there is contract for a quantity of more than five hundredweight this ticket must be sent, although the amount delivered at one time is less than five hundredweight. Thus, if I order a ton of coal, and you send it to me by a hand-barrow in quantities of four hundredweight at a time, your servant who brings the first delivery must also bring a ticket, because the contract is not for five deliveries of four hundredweight, but for one ton.

SECTION II.

BREAD.

The Bread Acts—All bread to be sold by weight—Compulsory—Not by description—Not enough to weigh the dough—Must weigh bread after baking—Not in customer's presence—Must have scales in shop—Must weigh in customer's presence if asked—False scales—Baker selling from a cart—Must carry scales—Sending bread round to customer—Differences—SCOTTISH BURGHS—Weight to be stamped on each loaf—Powers of police— $\frac{1}{4}$ lb. packet—Paper included—Whether lawful or not—Fancy or French bread—May be sold by description—What is fancy or French bread?—Is it a difference of material?—Or mode of baking?—Or shape?—The A.B.C. case—Bread may be "fancy" at one period and not at another.

In a previous chapter I have alluded to the Bread Acts, which are statutes of a rather ancient date, and which deal in a fairly comprehensive manner with the adulteration of bread and regulations for its sale. I have only, however, commented on those Acts so far as they relate to the adultera-

tion of bread : I now come to that part of them which deals with the sale of bread in connection with weights and measures.

With the exception to which I shall refer at the end of the chapter, bakers and sellers of bread may sell and offer for sale bread of any weight or size which they think fit and proper. To the modern person it may seem rather surprising that it should be necessary to have a law to this effect. But in ancient times it was partly law and partly custom that bread could only be made of particular sizes and particular shapes and particular weights. The gist of the enactment, however, is this : that **all bread shall be sold by weight** ; and if any baker or seller of bread sells or causes to be sold bread in any other manner than by weight he is liable to a penalty of forty shillings for each offence. This is subject to certain **exceptions** which I shall deal with later.

You observe that this enactment is compulsory. The baker or seller of bread must sell his bread by weight, and may not sell it by description. There was a case, for instance, where a person went into a shop and asked for a quartern loaf. Now a quartern loaf ought to weigh 4 lbs. ; but when this purchaser weighed his loaf he found it only 3 lbs. 14 oz. The baker was summoned, and he said that he had weighed the dough before baking, allowing something for shrinkage in baking. He admitted that he had not weighed the loaf after it was baked. The Court found him guilty of selling in some other manner than by weight. This was a sale, they said, by *denomination*.

I would have you note that when a man is charged with selling otherwise than by weight it is **for him to prove that he did weigh the bread**. And this was tested in the case where a policeman went in and asked for a "quart." loaf. He meant a quartern loaf. He paid fourpence, and received a loaf which weighed something over 3 lbs. 14 oz. The magistrates found the baker guilty of selling bread otherwise than by weight ; and as he did not prove that he had in fact weighed the bread, the High Court refused to upset the conviction. It has also been held that when a baker puts 4 lbs. of dough into his oven and then sells the loaves as $3\frac{1}{2}$ -lb. loaves this is not a sale by weight ; therefore the baker is guilty of an offence against the Act. In the trade case referred to, the loaves had shrunk in the baking from 4 lbs. down to 3 lbs. 7 oz. or less.

I was in a shop in London the other day and saw **a notice up** to the effect that all bread was weighed before baking, but that as the shopkeeper could not control the shrinkage, he sold each loaf as being of the weight of 2 lbs. 2 oz.—obviously less than the loaves would really weigh. In my opinion this is contrary to law ; though, in fact, no one is defrauded.

In order that customers may be protected, bakers and sellers of bread are **obliged to have fixed a beam and scales** in some conspicuous part of their shops at or near the counter, with proper weights or some other sufficient balance. Understand, please, that no baker is obliged to weigh his bread in the presence of the customer unless the customer asks him to do so. If the customer **does** ask him to do so and he refuses to do it, he

is liable to a penalty of £5. As I have said, every loaf sold must be weighed after it is baked and before it is sold, otherwise the baker or seller can be convicted of the offence of not selling by weight.

It is rather curious that no penalty is fixed by the English Act upon a baker or seller of bread who, in violation of the statute, keeps no scales or sufficient balance in his shop. Not that he escapes without punishment, but that he is to be proceeded against by the cumbrous method of an indictment before quarter session or assizes for misdemeanour. A penalty is fixed, however, for the man who, obeying the Act by keeping scales and weights, keeps false ones. For **every false scale**, and beam and balance, and false weight found upon his premises, a baker is liable to a penalty of £5. This, you will understand, is different from the law under which a baker is, along with all other persons, not to have in his possession false or unjust scales and weights (*see* p. 1343).

IN IRELAND, if a baker does not keep scales, weights, etc., fixed in his shop as required by the Act, he is liable to a penalty of £5, and there need not be any trouble of indicting him for misdemeanour.

Throughout the whole country a great deal of bread is sold from carts. Everybody realises the advantage of having a baker who calls on one with fresh bread daily. Now a **baker or seller of bread who sells from a cart** must carry in that cart constantly proper scales and weights or other sufficient balance. The reason is that if he is asked by any purchaser to weigh the bread then and there he may be able to do so. For a purchaser buying bread from a cart can demand to have the bread weighed then and there in his presence, and if the baker refuses he is liable to a penalty of £5.

I ought to add, perhaps, that in the very common cases where the baker delivers so many loaves a day by a standing order, entering the number of loaves and the amount of the price in a book kept for the purpose by the customer, the baker must always deliver the bread in a cart with weights and scales in it. I mean, that is, if he delivers it from a cart at all. If he simply sends his boy round with a basket, the messenger need not carry the weights and scales.

If you are a baker, and Mrs. Jones has given you a standing order for ten loaves of bread a day to be delivered at her house every morning, and you are in the habit of sending your cart with it, and you send your cart out with that bread without weights and scales as required by the Act, you will be liable to a penalty of £5. And it will not avail you at all, though you can prove it to the hilt, that you weighed every single loaf before it left your premises; nor will it avail you one single jot if you can prove up to the hilt that you have only charged Mrs. Jones for the exact weight of bread delivered. That is not the point. The point is that the Act of Parliament peremptorily requires that when bread is sent out to be sold from a cart the cart shall have weights and scales therein, to be used if the customer requires it.

But the case is different if Mrs. Jones comes to your shop and buys ten

loaves, and you weigh" them there and then, and in reply to your polite inquiry whether you shall send them she says "Yes." And you send them in your cart; but the cart contains no weights and scales. Here you commit no offence. And the reason is that you have not sold your bread to Mrs. Jones from your cart, but you sold it to her in your shop.

IN SCOTLAND.

In the burghs the law is very much more stringent. In addition to the other regulations, it is required that all bakers and dealers in bread in burghs must **impress on the bread itself the weight thereof**. It must be done in respect of all bread made for sale or exposed for sale; and any person who exposes or offers for sale or sells any bread not so impressed with the weight is liable under a penalty not exceeding forty shillings for each offence. It would seem that every loaf is a separate matter, so that if a person sells six loaves not impressed with the weight he may be fined six times forty shillings.

As to the manner of the impression, this is to be in **large and distinct** figures, and the weight must be the imperial weight. Apparently, it would be an offence to offer bread for sale stamped with the metric weight of the bread, although metric weights and measures may be used in general without breach of the law. If the bread is impressed with a false weight—I mean a weight which is more than the real weight of the loaf—the person who sells or offers or exposes for sale is liable to a penalty not exceeding forty shillings for each offence. The Scottish police—that is, such constables as are empowered to enforce the Act by the chief constable, or the chief constable himself, or any inspector of weights and measures—have large powers by way of seeing that this Act, as well as all other regulations as to weights and measures imposed by the Act, are carried out. Such chief constable, constable, or inspector may, at all reasonable hours, enter any building, or part of a building, or other place within the burgh, where **any article** is sold or made up, or kept for sale or exposed for sale—provided that the sale is by weight or measure. This also applies where articles are sold, or set apart, or kept, or exposed for sale in numbers; and also to articles which are numbered with a view to their being bought or sold. What is meant by this is that whether things are sold by the dozen or the hundred, and so on, in bundles or boxes, the persons mentioned have the same right to enter places where these things are sold or where they are made up for sale as they have to enter the building whether things are sold by weight or measure.

Besides that, the chief constable, constable, or inspector **may stop any cart or carriage** in the street, whether the road be public or private. He may also stop any person carrying a basket in which such articles are sold or kept or exposed for sale.

When the officer in question has entered any shop, warehouse, etc., or has stopped any cart or pedlar, he may desire that person to weigh or measure or count the articles in his presence. Should it happen that the weight,

measure, or number does not correspond with the weight, measure, or number which has been represented by the seller or shopkeeper, etc., the officer has the right to seize and take possession of the article or articles in question and carry them to the police office or to some other office appointed by the Corporation authorities. After seizure comes a hearing before the magistrate, and this magistrate may sentence the person accused to a fine of £5. He may also declare the articles seized to be forfeited. But the accused always has a chance of escape if he can prove that the deficiency in weight, measure, or number has arisen without any fraudulent intent.

There was a case in which a man kept some packets of tea for sale; one of these was a $\frac{1}{4}$ -lb. packet. An inspector of weights and measures went in and asked for a $\frac{1}{4}$ -lb. packet of tea. The shopman handed him one which was wrapped up in paper. On being weighed it appeared that the total weight of the packet, including the paper, was exactly 4 oz., of which a small part was represented by the paper. The shopman was prosecuted. But the Justiciary Court held that there was no fraudulent misrepresentation, saying that the actual weight of the packet was a quarter of a pound. I should not like to say how far this is good law. Possibly in England the High Court would hold that a fraud had been committed.

The way in which the Burgh Police Act works is this. The inspector or a constable stops a cart in which, let us say, there are bundles of herrings being carried. He asks the person in charge of the cart, "How many are there in that bundle?" pointing to one. Suppose the man says "One hundred." The inspector then says, "Count them," and it turns out there are only ninety-eight. The inspector promptly seizes the bundle, takes it to the police station or the office of the inspector of weights and measures, summons the seller before the magistrate, and the magistrate convicts—unless the seller can prove that he acted without fraudulent intent.

BOTH IN ENGLAND AND SCOTLAND there is one exception allowed to the rule that bread must be sold by weight. The Bread Act says that all bread must be sold by weight except **French or fancy bread**. The Scotch Act is slightly different—it applies, you remember, in burghs. It says "fancy bread or rolls." Now I imagine that the difference is merely one of words and not of substance. No doubt "French bread" is fancy bread.

It is held by the Courts that "fancy bread" means some bread baked in a shape different from the ordinary bread or else bread made in some manner different from the ordinary bread—such as bread sweetened or with currants in it, or something of that sort. It is quite clear that the mere fact that **bread is baked in separate loaves** and not in batches, or that it is baked so as to be crusty all over, does not make it French or fancy bread. This was decided in the case where the Aërated Bread Company were the defendants in 1873. The A. B. C. are well-known manufacturers of bread which was, when they began to use it, a new process whereby carbonic acid gas is forced into the dough by pressure. This answers instead of using yeast or other ferment. The kneading of the bread also is done by machinery, and not by hand. In all other respects the

Aërated Bread Company's bread is exactly like other bread. They make, or did make at the time of this case, two qualities, best and seconds, the seconds being made of flour out of which less bran was sifted than was the case of the best bread. It was in respect of the best bread that they were summoned. They used to make it not in tins, nor in batches; they made it in separate loaves placed in the oven apart from one another. The result was that after baking the loaves were crusty all over. This bread was not sold by weight, but by the loaf. There was no allegation of any cheating in the matter, because the dough of which the best loaves were made was measured by machinery so that there could not possibly be any mistake. After having been inflated with carbonic acid gas and kneaded by the machinery mentioned above, the dough is forced through a spout of a square shape, and as it comes out a knife descends at measured intervals, cutting off at each stroke the exact quantity for the loaf. The defence made by the Aërated Bread Company to the prosecution was that these loaves were French or fancy bread, and were sold as such. Therefore there was no need for them to weigh the loaves as they sold them. Moreover, it was proved that in the baking trade loaves baked so as to be crusty all over, as these were, were always called French or fancy bread. The justices found that the loaves were not French or fancy bread, because—

- “(1) The material of which the bread is made in no way differs from the ordinary loaves sold by bakers generally.
- “(2) The material of the loaves is the same, excepting the quality of flour, as that of the seconds bread, which bread is sold by weight.
- “(3) The manner of making differs from that of ordinary bread only in that the gas is pressed into the pores of the dough by force instead of being produced in the substance of the dough by ferment; that the bread is not, except in the manner of being in separate loaves, what was called the French or fancy bread at the time when the Bread Act was passed; and is in fact only English bread baked so as to have the outside crusty.
- “(4) That no advantage accrues to the consumer from this form of baking, but that it is necessary to the proper baking of the best bread by the company's process.”

The magistrates gave other reasons in support of their opinion, but these do not seem to be of much importance. The case was argued at great length; and Mr. Justice Blackburn in his judgment entered into a long inquiry as to the history of bread. At the time the Bread Act was passed, he said, there was “household” bread, which consisted of ordinary loaves, and “fancy” bread, which, according to his recollection of that time, was made of a finer quality of flour and made in the shape of a roll. The shape of the household loaf and the fancy bread was very different. The legislature then enacted that the bread should be sold by weight—that is, all ordinary

bread; and then it was provided that nothing should prevent any baker from selling bread usually sold in the denomination of fancy bread or rolls without being weighed. In Mr. Justice Blackburn's opinion, "fancy bread" meant such bread as at the time the legislature passed the Act was sold as French or fancy bread. He thought that bread merely baked so as to have an outside crust all over was not "French or fancy bread," because that description of bread did not depend upon whether it had an outside crust all over or not. All the other judges were equally emphatic. It was never intended, they said, to except from the requirements of weighing a large quartern loaf merely because it was baked, not in batches, but separately, and so became crusty.

It was held in another case that bread which was usually sold as fancy bread at the time of the passing of the Bread Act (1836), but is not now usually sold as fancy bread, must be sold by weight.

Mr. Justice Lush, who decided this case, said, "We cannot suppose that the legislature meant to stereotype a particular article and to say that it was such an article of luxury that it should be regarded as such in all time, no matter what changes or improvements may take place in the common food of the country." So that if in 1836 all tinned loaves were called fancy bread or French bread, but these tinned loaves have now become of common use, they cease to be French or fancy bread. It was contended strenuously that all bread was French or fancy unless it was baked in batches—that is to say, all tinned loaves and loaves baked separately so as to be crusty all over were fancy bread.

And I would say further that if a customer goes into a shop and asks for bread by weight, the baker must weigh the bread and must sell it by weight. If I go into a baker's shop and say, "Give me a French loaf," and the baker gives me a fancy loaf, he need not weigh it, because that comes within the exception of the Act. But if I go into the shop and say, "Give me a four-pound French loaf," and the baker gives me a loaf without having weighed it, he is guilty of an offence. When I ask for a four-pound loaf I am entitled to have a loaf weighing 4 lbs. at the time it is handed to me.

There was a bread-seller at Fareham who apparently did not hold that opinion. A policeman authorised to make the visit went to this woman's shop and asked for a "two-pound loaf." The loaf supplied was alleged to be a fancy loaf. The baker did not weigh it; and when it was weighed at the police station it was found to be nearly 2 oz. short of 2 lbs. The baker being summoned before the Hampshire justices pleaded in defence that she had sold not ordinary bread but fancy bread, and therefore was not bound to weigh it. The justices, however, convicted her. Then she appealed; and when the appeal was heard it was laid down emphatically by Chief Justice Cockburn that if the customer asks for bread by weight that clearly is a case in which, whether the baker chooses to give him ordinary bread or fancy bread, the baker is bound to sell by weight; therefore the conviction was affirmed.

SECTION III.

LICENSED VICTUALLERS.

Intoxicating liquors to be sold by measure—Measure to be marked—In England, to be sold in a marked measure—Welsh “blues” illegal—Less than half a pint need not be measured—Sale by “glass”—Penalties—The landlord’s wife—Scots LAW more precise—Liquor to be sold by measure—Penalties—May sell whiskey by the sixpennyworth, etc., without measure.

I WOULD have you note that the law both in England and Scotland requires **intoxicating liquors to be sold by measure**, with certain exceptions which will be mentioned. At the same time, the law is slightly different in the two countries, and I will show you the difference as I go along.

All intoxicating liquors sold in England by retail must be sold in **measures marked** according to the imperial standards. This does not apply, however, to liquor sold in cask or bottle, or to liquor sold in any quantity less than half a pint. The Act is fairly straightforward and easy of comprehension, so that not many cases have arisen under it. But there have been one or two which show that however straightforward the Act of Parliament may be, people will misinterpret it.

There was a case in which an inspector went into the bar-room of a public-house and asked for a pint of beer. The publican went into another room, drew a pint of beer into a properly marked pint measure, poured the liquid into an earthenware jug, and took the jug and a glass into the room where the customer was. The jug was not marked as a measure. The publican was thereupon prosecuted for “selling intoxicating liquor by retail in a measure not marked according to the imperial standards.” He set up in defence that the sale took place, not when he brought the beer to the customer, but when he drew it in his pint measure in his tap-room. But the judges held that the sale took place when he brought it in in the jug and not before. “The resources of evasion are fertile,” remarked one judge; and the dictum was capped by his learned brother with the remark, “We are not going to fritter away the Act.”

Another case came from Wales, where it appears that in some localities liquor used to be sold in a mug which was called a “blue.” The “blue” contained usually two-thirds of a pint, and was, I suppose, adapted to the requirements of the customer who was too thirsty for half a pint and not thirsty enough for a whole one. The price of the “blue” of beer was threepence. A publican one day sold a “blue” of beer, and it appeared that the person to whom he sold it was an inspector of weights and measures. The inspector carefully examined the “blue,” and could not find any verification stamp on it, nor any mark of any “denomination”—for the very excellent reason that there was not and never had been any stamp on it, nor any mark to show its capacity.

The publican was duly convicted of having sold intoxicating liquor in a measure not marked according to the imperial standards. He appealed, and

the appeal was argued with a great deal of ingenuity and cleverness by my learned friend the late Mr. Crump, Q.C. The judges, I remember, were highly amused at the ingenuity of that learned counsel in trying to put such a construction upon the Act as would save his client from a penalty. With great gravity he argued that the Act did not compel the publican to sell all intoxicating liquor in a marked measure, but only that if he sold it by measure the measure should be marked. "Now," said Mr. Crump, "this was a sale not of a pint, or two-thirds of a pint, or of any other quantity by measure. It was the sale of some beer by a very well-known description. The publican never pretended that he was selling any particular quantity. It was as if he had said to the customer that he would sell him one of those blue mugs full of beer for threepence. Or, to put it the other way, as if the customer had pointed to one of the blue mugs and said, 'I want that full of beer.'" At the conclusion of the learned counsel's argument, Mr. Justice Stephen shattered the fabric he had raised by observing, "I never thought anyone could make such strenuous efforts to misunderstand anything so clear." Wherefore the unfortunate publican from the Principality was duly convicted; and I suppose the "blue" has ceased to be popular in Wales from that time forth.

But note that a publican can still sell "a glass of beer" or "a whiskey" so long as the "glass" or the "whiskey" is less than half a pint; and he need not measure the liquor. He may, of course, come in for a prosecution under the Weights and Measures Act if he pretends to sell some denomination of an imperial measure (*e.g.* a quarter of a pint) and does not measure that quantity out, using a measure properly marked and stamped according to the imperial denomination. I mean, that even when a less quantity than half a pint of liquor is sold, if the seller sells it as part of a pint he must measure it in a vessel duly marked and stamped. If he sells it simply as "a glass" of liquor (always remembering that the glass must not be as much as half a pint), seeing that a "glass" is not any imperial denomination, nor any fraction or aliquot part thereof, the publican can sell the liquor without measuring it; and the same thing applies to a "glass of gin" or "small whiskey," and so forth.

The penalty for evading this section of the Licensing Act is £10 for the first offence and £20 for any subsequent offence—these sums being the maximum. He is liable to forfeit the illegal measure in which the liquor was sold. And the licensed person is liable not only for his own individual acts in this regard, but he is also liable for the act of any person under his control or in his employment whom he suffers to sell intoxicating liquors illegally as described. By a polite fiction it is always held that if a publican's wife, being behind the bar and assisting in her husband's business, is guilty of an offence of this kind, she must be supposed to be under her husband's control, and he is liable for her acts—though, of course, every married man will tell you that the lady is no more under the poor man's control than was Mrs. Bumble under the control of Mr. Bumble on a celebrated occasion in fiction.

I have already, I think, told you that **metric measures**, duly stamped, may be used for the sale of liquor as well as for any other purpose ; and that they are now used in London in some foreign restaurants. I lunched at such a restaurant not long ago, and was myself served with lager beer in a measure marked according to the metric standard. I may say, however, that the lively Italian who kept that restaurant rendered himself liable to something in the nature of a prosecution ; for I asked for a pint of lager beer, and the brisk waiter brought me not a pint but half a litre. A litre is a pint and three-quarters and a little over—so I got half that, which was, of course, rather less than a pint.

IN SCOTLAND

the law is a little more precise, and is governed by an old Act of the reign of George IV. The Scottish Licensing Act, please observe, does not apply to all intoxicating liquor that is sold by retail, but only the liquor sold by retail to be drunk or consumed on the premises. On the other hand, the English and Irish Act makes an exception in favour of liquors sold in cask or bottle. There is no such exception in the Scottish Act. The Scottish Act, however, has one exception the same as the English Act—namely, that it does not require liquor less than half a pint in quantity to be sold by measure.

I said that the Scottish Act was more precise. It is in respect of the fact that it appears only to allow liquor to be sold by the gallon, quart, pint, or half-pint measure sized according to the standards. The landlord is **not bound, apparently, to serve the customer** in a measure which is sized according to the standard unless the customer asks him to do so. So that if a Scottish landlord is asked for a pint of ale, and he sells a pint which he measures in a properly verified pint pot, and then empties into an unverified earthenware jug, he is not liable to be prosecuted, unless the guest or customer has asked him for a pint in a pint pot. You see, the English Act says that the liquor must be *sold in* measures marked according to the standard. The Scottish Act says that the liquor should be *sold by* the gallon, quart, pint, or half-pint, measured according to the standard. There is nothing at all to compel the landlord to serve his liquor in any particular form or shape of vessel. Of course, the measure into which the beer, etc., is measured in the first instance will have to be verified and stamped, otherwise it will not satisfy the Weights and Measures Act.

The penalty on a Scottish landlord who infringes this Act is only forty shillings for each offence, very much less than his English and Irish brethren have to pay. Neither is there any provision in the Scottish Act rendering a publican liable for the acts of persons under his control or in his employment. There is one other special provision as to intoxicating liquors which applies only to Ireland, and is contained in the Refreshment Act of Ireland, 1860. By it every person with a wine refreshment licence selling wine by retail and not in bottles must sell by the gallon, quart, pint, or half-pint measure

sized or marked according to the standard ; and if he is required to serve the drink in a sized or marked vessel he must do so. This Act also does not apply to any sale of less than half a pint.

I should add, perhaps, that it has been decided that a publican is not liable if he sells a "whiskey" or a "hauf o' whiskey" without measuring it unless it is more than half a pint—which it never is. The case in which this was decided was where a publican admitted that he habitually sold "six-penn'orth of whiskey" and "a shilling'sworth of whiskey," without measuring it in a marked measure. The Court held that he was quite entitled to do it, so long as he sold not more than half a pint at a time.

SECTION IV.

MISCELLANEOUS TRADERS.

Millers to keep weights and scales—All brewers for sale—For convenience of Excise officers—Heavy penalties—Excise traders—Distillers, etc.—For revenue purposes—Heavy penalties for fraudulent devices—Hop dealers—Hop growers—Proportion of bag to hops—Bags and "pockets" to be marked with weight—Time for marking—Size of mark—Market keepers—Goods sold in market to be weighed if required—Carts to be weighed—Markets and fairs for sale of cattle—Accommodation for weighing—Machines and weights to be periodically tested—Weight tickets.

THERE are a good many miscellaneous provisions contained in various Acts which have relation to weights and measures. Sometimes these provide that certain persons must keep weights and measures of a certain kind at their place of business. Sometimes they provide that people shall be obliged to weigh certain articles. I will deal with the most useful of these Acts ; by which I mean, those which are most likely to be required by the readers of this book.

Persons required to keep weights and measures are :

(1) **Every miller or person keeping a mill** for grinding corn. Such a man must have in his mill a true and equal balance with proper weights according to standards. If he has not such balance and weights on his mill he is liable to a penalty not exceeding twenty shillings.

(2) **Every person who brews** for sale is obliged by the Excise laws to provide and maintain "sufficient and just scales and other necessary and reasonable appliances." Do not imagine that this is for the protection of the public. Not at all. It is merely to enable the Excise officers to check, gauge, and measure both the materials used in brewing and the liquids produced by brewing. The brewer who has not proper scales, weights, etc., or whose scales, weights, etc., are unjust, is liable to a fine of £100. The same penalty is provided if the brewer, after his stock has been weighed or before it has been weighed, puts or allows to be put any other substance thereto whereby the revenue officer is unable to take a proper account.

(3) Besides the brewer, every excise trader—that is, distiller, etc.—must

have sufficient just scales and weights and a set of standard measures. These again are merely for revenue purposes, in order that the proper officers may weigh, measure, and take an account of the spirits, goods, and commodities in his warehouse stock or possession, and of the casks or other vessels used by him in his business. The weights and measures must be of the prescribed denominations, and must be kept in a convenient place in the distillery, warehouse, or other premises which the proper revenue officer approves. I need hardly say that the officer must be allowed to see these weights, measures, etc., whenever he wants to do so; or the officer may require the trader, his servants and workmen to assist him in weighing, measuring, etc. The penalty for any breach is £100. And the penalty for providing improper scales, etc., or for practising any device or contrivance to defraud the revenue in these particulars, is £200.

(4) **The man who sells or grows hops** is also liable under two Acts. He must not bag any hops in a bag whose weight is greater in proportion to the gross weight of the bag plus the hops in it than 10 lbs. for every 112 lbs. That is to say, if you put 100 lbs. of hops into a bag weighing 12 lbs. you are liable to a penalty under this Act. The bag with the hops in it weighing 1 cwt. must contain at least 102 lbs. of hops, which leaves 10 lbs. for the weight of the bag. Of course, you can have a bag as much less as you like. The penalty is imposed upon owners, planters, and growers of hops, and the amount of it is £20.

It appears that there used to be a great deal of fraud in connection with the selling of hops. By way of preventing some of these frauds at least, the Act passed in 1866 provides for the **marking of all bags or "pockets"** of hops. The bag or pocket are words legally interchangeable when used in connection with hops. They include any package of any kind used for containing hops, or in which hops are packed and sent from the grower or producer to any factor, merchant, brewer, or other person either before or after a sale thereof. The owner, planter, or grower of hops is obliged to mark every bag or pocket within a month after the hops had been packed in it. He must use durable ink. He must mark the outside of each and every bag. The figures used must be at least four inches in length and half an inch in breadth. In the case of a pocket of hops there must be plain and legible figures at least three inches in length and half an inch in breadth. The figures must show the true gross weight in hundredweights, quarters, and pounds; and the owner, planter, or grower who does not comply with these requirements is liable to a penalty of £20.

Any person also who sells or exposes for sale **bags not properly marked** is liable to a penalty which is not to be less than £5 and not more than £10 for every bag in which the hops were exposed for sale. If, however, the seller can prove that he really believed the bags to be properly marked, he is entitled to be acquitted. Anybody who alters any marks on a bag of hops is liable to a penalty of £20 for every bag so altered.

(5) **People who keep markets** are obliged to provide weigh-houses with proper weights, scales, and measures—I mean weights, scales, and measures

properly stamped and verified. Anybody if required by the purchaser is obliged to weigh anything he sells in a market or fair under the penalty of forty shillings. Drivers of carts are also bound at the request of either party to the bargain to weigh cart and load; and anybody whose cart and load is to be weighed who makes use of any fraudulent contrivance to increase or diminish the weight, as the case may be, is liable to a penalty not exceeding £5 for each offence.

(6) Companies, corporations, or persons who hold **markets and fairs in which tolls are taken** in respect of cattle are bound to have accommodation for weighing such cattle. They must also appoint proper persons to take charge of machines and weights, and allow the use of the machines and weights to the public using the market or fair for weighing cattle as may be from time to time required. The machines and weights must be tested twice a year at least by the local inspector of weights and measures, at the expense of the market authority. It is at the option either of the seller or the buyer to have his cattle weighed at one of the machines to be provided by the market authority. And such person can demand from the person in charge of the machine a ticket specifying the true weight that the cattle weighed. It is an offence for the man who has charge of the weighing machine either to refuse to weigh the cattle when asked or to refuse to give such a ticket or to give a false ticket. The minimum fine for any of these offences is 2s. 6d. and the maximum 40s.

Book IX.

THE LAW OF TRADERS RESTRICTED BY LAW.

PART I.

SELLERS OF INTOXICANTS.

CHAPTER I.

LICENCES AND LICENCE-HOLDERS.

ENGLAND—History of the law—Kinds of licences—No person to sell without a licence—Licence restricted to certain premises—Penalties for illicit sales—What sales illicit—Selling on unlicensed premises—Clubs—Bogus clubs—Committee not responsible if steward acts contrary to orders—Death of licence-holder—Business carried on by his executors, etc.—Bankruptcy of licence-holder—Beer-dealer having off-licence—Agents of beer-dealer—When is a sale on licensed premises?—An august shebeen—Servants not liable—Enlargement of licensed premises—No new licence if premises substantially the same—EXCISE LICENCE always necessary—When no justices' licence needed—Dealer's off-licence—Beer-dealer's additional licence—Dealer's foreign wine licence—Sweet-dealer's licence—Spirit-dealer's licence—What are spirits?—Spirit-dealer's additional licence—Liqueur licence—Druggist's licence—JUSTICES' LICENCES—Alehouse or full licence—To whom grantable—What is an inn?—Beer on-licence—Applicant must reside on premises—But need not own the business—Beer off-licence—Cider and perry—Sale of wines—Refreshment-house licence—House of public resort and entertainment—Sweets licence for refreshment-house—PREMISES AND PERSONS—Qualifications—Value—Differs in towns and rural places—Old premises—New premises different—No value for "old" alehouse—Other licensed premises with no valuation qualification—Disqualification by repeated offences—Protection of owner of premises—Owner may have disqualification removed—Personal disqualification—Sheriff's officer—Convicted felon—Person convicted for selling spirits illegally—Person twice convicted—Minor kinds of licences—Six-day and early closing—How granted—Only inn-keeper bound to keep open—Sunday closing voluntary—But may be compelled indirectly—Trying to break down the law—What is Early-Closing Licence?—What is a licence?—Why publican not bound to keep open—Occasional licences—A difference in favour of fully-licensed alehouse keeper—Packet-boats—Scotch boats, no sale on Sunday—Canteen licences—Drink licences for music-halls and theatres—Music and dancing licences—Chaotic state of the law—Premises not requiring to be licensed for music, etc.—How applied for in the country—How in London—How in Middlesex—Billiard Licences—SCOTS LICENSING LAW—Three kinds of retail licences—Inns and hotels—What are—Accommodation for sleeping—Sub-divisions of licences—Public-house licence—No sales during prohibited hours—Dealer's and grocer's licence—An off-licence—Gratuitous "treat"—Occasional licence—To whom to apply—Local regulations—Notice to the police—Early closing—Early-closing licences—Alteration of hours—Sale in boats and vessels—During fair time—Shebeening—How shebeening proved—Hawking.

THE law relating to the sale of intoxicating liquors has for centuries exercised the mind alike of the rulers of the country and of the social reformer. There is nothing in this book of a political nature, and I do not intend that there should be: I am going to point out merely what the law is. First, what licences are required for the sale of intoxicating

liquors of various kinds ; next, what different kinds of licences may be obtained ; then how they may be obtained ; next, grounds upon which they may be refused, and how the granting or renewal of such licences may be opposed by persons interested ; and, last of all, some law relating to the conduct of licensed premises.

It may be interesting, therefore, to note that the first Act in ENGLAND requiring persons who sold intoxicants to be licensed is an Act of the year 1551, the reign of Edward VI. You go on, if you follow the history—the amazing history—of this subject, through a whole sea of Acts of Parliament. Elizabeth and Mary seem to have left things alone pretty much. James I. procured the passage of four Licensing Acts ; Charles I. two Licensing Acts. But it is not until we come to the reign of George II. that we come to the enormous bulk of the statutes which now fill the Parliamentary Roll. In the reign of George II. there were no fewer than nine Acts dealing either with the granting of licences or the conduct of licensed premises.

The former king, George III., has ten standing in his name. George IV. has only four ; but one of these is the Ale House Act, 1828, which is the basis of our modern system. Since that time Acts of Parliament have rained thick and fast until the year 1901, when a statute was placed on the record, restricting the sale of intoxicants to children. Altogether, the reign of Queen Victoria saw some sixty or seventy statutes passed dealing in some degree with licensed premises or the granting of licences. Some of these, of course, were mere revenue Acts, fixing the kind of duty that should be payable. Some were Acts dealing simply with one particular thing—for instance, the sale of intoxicants to children. Others were merely sections of larger Acts : for instance, the Truck Amendment Act and the Coal Mines Regulation Act both contained sections touching licensed premises. The most important statutes of the reign of Victoria were the Refreshment House Act, 1860, the Public-house Closing Acts, 1864 and 1865, the Wine and Beer Houses Acts, 1869 and 1870, the Licensing Acts, 1872 and 1874.

The number of licences now extant in the United Kingdom—I mean the number of **kinds of licences**—is very considerable. There is the full alehouse licence, which is either a new alehouse licence or an old alehouse licence. There is the new beer licence, and then the beer licence of 1869, the wine licence, the spirits and liqueurs licence, the sweets licence ; and all these may be for licences permitting the article sold to be drunk on the premises or off the premises only.

The law prohibits the sale or exposure for sale, by retail, of any intoxicating liquor **unless the person selling the liquor is duly licensed** to sell it. And more than this, no licensed person may sell liquor except upon the premises where his licence authorises him to carry on business. The last-mentioned fact is the reason why we do not see in England the “beer-garden” system in vogue in Germany. If anybody does sell intoxicating liquor either without a licence at all or not on licensed premises, he is liable for the first offence to a penalty of £50, or imprisonment with hard labour for a month ; for the second offence to a penalty of £100 fine, or imprisonment for three

months ; and for the third or any subsequent offence to a fine of £100, or imprisonment for six months. You understand, please, that the penalties I have mentioned are in each case the maxima. The Court can inflict a smaller fine or a shorter term of imprisonment. And readers should take note that if anyone is convicted of a second offence of the illicit sale of intoxicating liquors, the Court by which he is tried and convicted may disqualify him for five years from holding any licence to sell intoxicating liquors. If he is convicted for a third or subsequent offence the Court may order him to be disqualified either for a term of years or for ever.

The question is, sometimes, whether a transaction is a sale or not. And **what is the illicit sale of intoxicating liquor?** I would have you notice that it is not necessary for the prosecutor prosecuting for such an offence to show that any money passed, nor that any liquor was actually consumed. If he satisfies the Court that a transaction in the nature of a sale actually took place, that is enough. And if the prosecutor proves that some liquor was consumed or was intended to be consumed on premises to which a licence is attached by some person other than the occupier or his servant, that is evidence that the liquor was sold to the person consuming the same or being about to consume it, or that he intended to carry it away. The point is, that if you find a man in the public-house on Sunday when the place has only got a six days' licence, and that man has a glass of beer in front of him—even if the beer is untouched—it is a legal presumption that the publican has sold him the beer.

It is a very dangerous thing for a licence-holder to **sell liquor on unlicensed premises**, or to allow any servant to do it. For instance, there was a woman who held a publican's licence, and she had a husband. This husband seems to have been a man of no very great intelligence ; for one day he took out of the public-house a lot of liquor and carried it to a private house where a raffle was going on. There he sold the liquor, but brought the money back to the public-house and gave it to his wife. The wife was convicted of selling liquor at an unlicensed place.

The next thing that occurs to one as to unlicensed places and unlicensed persons is the case of clubs. A club does not come within the Licensing Act ; because **a club is a sort of enlarged family**. When the committee of a club orders a barrel of beer for the use of the members, that barrel of beer belongs to the members. Therefore, when the beer is retailed out in pints and half-pints the members are only buying their own beer. It is just as if I asked you to buy for me a dozen bottles of wine, and kept them in your cellar ; but I have asked you if you will be good enough to pay for them. You have paid for them—let us say at the rate of forty-eight shillings the dozen. I then come to you and say, “I cannot pay you the forty-eight shillings you paid on my account all at once, but I will give you four shillings of it every time I come to your house to draw a bottle.” The members of a club are exactly on that footing. But this is only so while the liquor is strictly confined to distribution amongst members. If a man who is not a member of a club goes there and pays

for any intoxicating liquor, somebody is committing an offence against the Licensing Acts.

It has been held that if the steward of a club had been forbidden by the committee thereof to sell liquor to anybody but members, and notwithstanding this prohibition the steward allows other people to have liquor and pay for it, the steward alone is liable for the offence. On the other hand, if there is carried on at a house some place of public resort which is called a club, but is really a public place where anybody may go, and liquor is sold there, the manager of the club and everybody concerned is guilty of an offence against the licensing law. There are dozens, if not hundreds, of places in London which are called clubs but which are really unlicensed drinking-shops. The proprietors thereof are usually foreigners, and so, I believe, are most of their customers. A man will hire a house in Soho, fit it up with a bar and dancing-room, call it the "X.Y. Club," and it soon becomes known that anyone who wants a drink after the public-houses are closed can get it at the "X.Y. Club." Sometimes the proprietor goes through the form of having a man at the door with a book. This man asks everybody who comes in, "Are you a member?" If the answer is in the negative, the obliging door-keeper offers to make him a member. The ceremony of admission usually consists of writing the candidate's name in the door-keeper's book, the payment of the sum of perhaps two shillings and sixpence, and the handing of a receipt for the same to the new member. Clubs of this kind generally fall into the hands of the police sooner or later. It is very difficult sometimes to catch them tripping if they go through the form of admitting members. But sooner or later the proprietor becomes careless—admits somebody who is not a member, and supplies him with drink. I ought to say, perhaps, that whatever forms are gone through, and whatever pretences are made to membership, the proprietor is liable to be found guilty of an offence against the Licensing Acts if the magistrate who tries him comes to the conclusion that the forms and ceremonies were only a sham, and that the place is really not a club but a drink shop.

There are a few people who may sell liquor without a licence.* In the first place, if a **licence-holder dies** during the continuance of his licence, the **heirs, executors, administrators, or trustees** may carry on the business until the next special licensing meeting held in their town or county. At that meeting, however, the person who intends to carry on the business must procure the licence to be transferred into his name. The same thing applies to a **bankrupt**. When a man becomes bankrupt all his property and rights of every kind whatsoever cease to be his; they belong to his trustee in bankruptcy. Amongst other things, if a man has a licence for the sale of intoxicating liquor that licence passes to the trustee,

* I omit here the privileges of the Vintners' Company, whose members, if they have become freemen by birth or servitude (apprenticeship), have the right to sell wine without a licence; also certain privileges appertaining to the ancient borough of St. Albans. These are hardly matters of importance to the average man.

because it is a personal privilege of the nature of property. In fact, it is much on the same footing as a patent. The trustee in bankruptcy may carry on the business of the bankrupt until the next special licensing meeting. At that meeting, however, he must apply to have the licence transferred to his name.

As, however, it might happen that the man should die or become bankrupt quite close to the time of the special licensing session, it has been provided that if the decease or bankruptcy of the licence-holder takes place within the fourteen days before a special licensing meeting, the executor, trustee, etc., need not apply at that licensing session for a transfer, but may wait until the following special session and then apply. With this exception: licences must always be renewed or transferred promptly, otherwise they will lapse.

There is a certain kind of licence which is called **the beer-dealer's licence**; this is a wholesale licence which may be obtained by beer-dealers who sell strong beer* only in casks. Such casks must contain not less than four and a half imperial gallons. Or the licence may be had by a beer-dealer who sells beer only in bottles, not less than two dozen reputed quart bottles at one time. These licences are off-licences pure and simple, and only authorise the holder thereof to sell liquor for consumption off the premises. I ought to say that the dealer's licence is not a justices' licence, but only one granted by the Excise. Anybody may get it who likes to pay for it, simply by paying for it.

A difficult question has arisen many times as to the scope of this licence. It has arisen in cases where a beer-dealer in a large way of business has *different premises in several parts of the same town* or elsewhere, or perhaps in different towns. The branches are managed by agents. The view generally adopted in these days is that if the dealer has premises and stores where his agent receives orders or sells beer, then these premises all have to be licensed; but if the agent simply has offices, or a shop, or a house of his own, and merely takes orders there for the wholesale beer-dealer, the place does not require a licence.

You will get a good idea of what is meant if I give you a couple of instances, one of each kind. Messrs. Mault & Opps, beer-dealers, of Iron Town, carry on a large business in the way of bottling and selling to retailers. They have agents in five surrounding villages. The terms are that each agent is to receive whatever orders may be given to him—or he may canvass for orders—and on all trade done he is to get a sum of 5 per cent. commission; besides this he is to receive the small salary of £5 a quarter. By the terms of the engagement the agent is not bound to have a shop, or office, or a house at any particular place. Of course, he is expected to reside in the village for which he is agent and to have a place of some sort there; but his contract with the beer-dealer **does not bind him to occupy any particular place**, nor does the beer-dealer pay the rent of any place for him. The agent could, if he liked, give up his present address and go to another and the

* "Strong beer" means all beer other than table beer. It is defined on p. 1396.

beer-dealer could not count it a breach of the engagement. Under these circumstances, the shop, office, or house where the agent carries on business would not require a beer-dealer's licence.

But let us suppose a firm of beer-dealers at Birmingham should wish to establish a trade in Manchester. They appoint Mr. Jones to be their agent and to get orders and to do all the business he can for them. As they wish to be in the middle of the town **they take an office** in Deansgate, for which they pay. They install Jones there, and promise to pay him a commission on all orders obtained. There is nothing to prevent Jones doing other business if he likes, nor to prevent him from using the office for his own purpose. In this case an Excise licence would be required, because the office is the place where the beer-dealer carries on business. You see, the office is his; he pays the rent for it, and Jones has no right to change the office for another. I am not sure whether it would be considered the merchants' office so long as they paid the rent for it even if it were taken in Jones's name; I think it would be their office. For instance, instead of sending a man from Birmingham to Manchester, they got hold of Jones, who was already doing some sort of business in Manchester, appointed him their agent upon the terms that they would pay him commission at so much per cent. and pay half the rent of his office. In a case like that I think it would be very doubtful whether or not the office would require to be licensed. At all events, I would never advise a client who was a beer-dealer to make an arrangement like that. The arrangement that I would make would be that I should pay the agent a salary, but by no means anything on account of his rent. And if I wanted to be sure that the agent should always have an office in the central part of the town, I should simply agree with him as one of the terms of the engagement that the agent, during the continuance of his engagement, have an office within, say, half a mile of the town hall, or something of that sort.

The point is, **if you want to avoid paying for more than one Excise licence**, to have all the branches not your property or your premises, but the property and premises of the agent. One rather curious decision has been given with respect to the licences of beer-dealers who sell wholesale. I have said that they must sell their beer either in casks of not less than four and a half gallons or in bottles not less than two dozen reputed quarts. But it has been decided that such a dealer may, under his dealer's Excise licence, sell any bottles of smaller dimensions than reputed quarts provided that he does not sell less beer at a time than would be contained in two dozen quart bottles. Thus, a beer-dealer is within the terms of his licence if he sells four dozen pint bottles or eight dozen half-pint bottles.

I do not know that it is even now settled conclusively by decisions as to what is and what is not contrary to the Licensing Act if done by a **brewer holding a beer licence**. As late as the year 1895, a brewer who had the usual off-licence for the sale of beer by retail—this was to enable him to sell casks containing less than four and a half gallons—used to send round a cart containing jars of beer to houses near his brewery. The method of business

was one adopted by many brewers. The carter called and took orders one week. The same day of the following week the beer was delivered and any empty jars taken away. On the same day of the week-after the carter called again for the money. It is important to notice that these jars were not labelled or ticketed in any way. The carter would simply report that fifty jars had been ordered. When he went on his delivery round next week fifty jars would be given to him. And he would hand those jars over as he came to the houses of the customers. As we should say legally, no particular jar of beer was appropriated to answer the order of any particular customer until the cart reached his door.

In that case it was decided that the sale was illegal; the reason being that the sale took place not at the brewery when the jars were put into the cart, but at the customer's house when the jar was taken out of the cart. For there is a difference between a sale and a contract of sale. There was a contract of sale in this case immediately the customer gave an order to the carter to bring so many jars of beer. But there was no sale until some particular jars had been set apart or appropriated to meet the order in such a fashion that one could say, "Those three jars are Mrs. Jones's." And as the brewer had only a licence to sell beer on his brewery and he had in fact sold beer in the street, he was held liable for selling beer by retail not on licensed premises.

The next case was also that of a brewer who used to send round small quantities of beer. He had an off-licence just as in the first case. But this brewer used to send round a traveller who carried a lot of post-cards ready addressed to the brewer at his licensed premises. The traveller did not take orders. He would fill in a post-card at the customer's request and get the customer to sign it, and would then put it in the post; but he would not actually take an order himself. In one case which came before the Courts a customer had ordered (on one of the post-cards) six pint bottles of ale to be sent to his house every week until further notice. This order was signed by the customer at his own house and handed to the traveller, and posted by the traveller. When the post-card arrived at the brewery the traveller put these bottles of ale in a box and put a label on one bottle with the customer's name and address. The case was a little bit complicated by reason of the fact that the box in which the six bottles were put was a box made for carrying twelve bottles, and the other six places were filled by six other bottles for another customer. These six were labelled with the second customer's name also. Both half-dozens were delivered and paid for at the customers' houses.

The question arose, **Was the sale on licensed premises** or not? In other words, Was the sale a sale at the customer's house or at the brewery? If you look at the first case I gave you, you will see that both the contract of sale and the appropriation of the goods to the contract took place at the customer's house and not at the brewery. In the case I have just given you the traveller did not take the order at the customer's house, but requested the customer to send it by post to the brewery. Secondly, there was no order

until the post-card reached the brewery. Again, the six bottles of ale were appropriated to answer the contract, and the contract was a complete one at the brewery immediately the six bottles were put in the box and a label affixed. Therefore, whether the word "sale" referred to the contract of sale or the sale itself, in the former case it took place at the customer's house and in the latter case at the brewery. So the brewers were all right.

In the **case of a servant** who by his master's orders sells his master's goods for his master's benefit, the servant is not liable for selling liquor without a licence if he sells the liquor at unlicensed premises or if his master is an unlicensed person—except so far as he may be liable for wilfully aiding and abetting. Thus, if you take the case of the brewer above mentioned who sent out the jars of beer, that brewer had committed an offence and was liable to a fine. But his servant who took the orders and delivered the beer—that is, the man who actually carried out the whole transaction—was not liable personally for selling beer without a licence or on unlicensed premises.

This was decided in a case which referred to no less **an august shebeen** than the House of Commons. Some of my readers may remember that a prosecution was instituted against a man who kept a bar in the House of Commons and there sold liquors to members—and possibly to others. This man had no licence. He acted under orders of a Committee of the House of Commons, to which Committee the liquors sold belonged. Of course, the Committee had no more power to do an illegal act than anybody else has; and I am not sure that the members of the Committee might not have been prosecuted successfully for selling liquor without a licence. But the prosecutor prosecuted the wrong man. He went for the person who was merely a servant, and accused him of selling liquor on unlicensed premises. The High Court decided that if an offence had been committed it had not been committed by this man, who was merely selling his masters' liquor at his masters' orders. The only offence, as far as I know, of which this defendant might have been convicted would have been the offence of aiding and abetting his masters in a breach of the law. But on such a prosecution it would have been necessary to prove a wrongful intent; and that, possibly, the prosecution could not do.

When a liquor-seller enlarges his premises so as to take in a lot of ground not covered by the former licence, how far is he bound to get a new licence? Suppose, for example, I have an hotel which consists of Nos. 1 and 3, Dark Street. By strict attention to business and my efforts to please customers I make the hotel a great success—so much so that I could have twice as many guests if I had room to put them in. I do not want to leave my present premises; because, for one thing, it is always risky for a man in trade to change his address. Secondly, my hotel is in a very convenient spot for the business men who are my usual customers. I therefore think of extending, and buy up Nos. 5 and 7, two private houses next door. I knock down the walls and so contrive to make what was formerly three buildings into one. Now does my licence extend so as to enable me to use it for the new addition?

I say at once that this is a question of fact. It is for the justices to decide. The rough-and-ready rule adopted by most benches of magistrates is that if the licence-holder has doubled his premises he must be taken to have made a new place and to require, therefore, a new licence. But if he has added something which does not make his place double the size it was before, in most places and in most cases the magistrates will simply count it an alteration and not a reconstruction. But this is not a rule of law. It is only a rule of thumb adopted by many Benches for the sake of convenience, and because it is always better to act on some rule, however rough, rather than on none at all.

But there have been cases in which justices have decided that the altered and enlarged premises are in substance the same as the old premises even where a house has been more than doubled in size. And it is almost hopeless to expect to upset the decision of the justices on such a point, simply because the question is one of fact and not one of law. Similarly, it is quite open to the magistrates to decide that premises are not substantially the same when they have been altered to less than double the size of the original premises. And it is equally hopeless to expect to upset the decision in *this* case, for the reason given above.

The whole matter was summarised by Chief Justice Cockburn, in a case where he said, "Whether the premises to which the licence is granted and the premises in question are the same is a question of fact for the magistrate. I do not mean to say that if the magistrate is entirely wrong, that if, for instance, he had held the addition of a whole street of houses to be immaterial, it would not have been competent for us to review his decision. But it would be necessary for us to see that the magistrate's decision was clearly wrong."

While I am on this question of **alteration of premises**, I would say that it is risky to make any considerable alterations or additions without bringing the matter first before the notice of the justices at some general or special licensing sessions. I will tell you why. It is always a question of fact, as I have said before, whether the premises as altered are substantially the same premises as those licensed. Bearing this in mind, I would say that a licensed victualler is just as much entitled to extend his premises as is any other trader; and the extended area is his place of business for the time being.

But where **the licence-holder differs from other people** is (1) that he must not sell on unlicensed premises; (2) that at the end of the year from which his licence was granted he will have to apply again to the justices for a renewal. Now if the premises so altered are not substantially the same as those originally licensed, the publican lays himself open to be prosecuted for selling liquor on unlicensed premises. Next, he lays himself open to the objection being taken, when he applies at the general licensing sessions for a renewal of his licence, that the premises in respect of which he applies are new premises and therefore that the old licence has expired and cannot be renewed. In other words, he stands a chance of having it decided against him that instead of applying for a renewal of a licence he

ought to be applying for a new licence altogether. And it is possible that if he is put to it to apply for a new licence he will fail, while if he merely applied for a renewal he would succeed; for, as I shall show you later, the procedure is different in the case of renewals from the case of new licences, and the law as generally administered is different as to grounds of refusal. I do not mean to say that there is any difference in the rule of law as to grounds of refusal; but merely that most (though not all) magistrates in the country regard the licence-holder as having the right of renewal except under certain circumstances, while the man applying for a new licence has no right to a new licence, either moral or otherwise.

You should therefore, instead of taking your courage in both hands, when you are contemplating any additions of a substantial nature or anything which amounts to rebuilding at your premises, go bareheaded to the first special licensing meeting, submit your plans to the justices, tell them frankly what you are going to do, and if they object at all strongly, go home and don't do it. It is very inadvisable to make any contracts or plans of a fixed or binding nature to purchase property next to your licensed premises, or to enter into contracts with builders for extensive alterations, until you have first been to an architect and got him to draw up plans for you, and have submitted those plans to the licensing justices as I have recommended.

Before anybody can sell intoxicating liquor (except beer which contains less than 2 per cent. of proof spirit) he **must have an Excise licence**, which varies according to the kind of licence required and the kind of premises for which it is required. In addition, he must **in many cases obtain a justices' licence**—or, rather, he must in those cases obtain a justices' licence before he is allowed to apply for the Excise licence. A man does not sell intoxicating liquor by virtue of a licence granted by licensing justices. That is merely one of the conditions imposed in certain cases upon the grant of the Excise licence, which is his real authority to sell the liquor.

Now the Excise licence is merely a matter of revenue. The licence of the justices is a matter of public order for the prevention of drunkenness and for the purpose of enforcing order in houses where liquor is sold. There are, therefore, roughly speaking, two classes of cases. As a rule, licences for sale by wholesale or for sale for consumption off the premises are merely Excise licences, and do not require any previous consent by magistrates. But licences which permit the consumption of liquor on the premises where it is sold invariably require a justices' licence first. Let me give you now the cases where only Excise licences are required, and afterwards those cases where justices' licences are required. I will now show you when you can sell liquor under an Excise licence only, and when you must get a justices' licence.

EXCISE LICENCES WHERE NO JUSTICES' LICENCES ARE NEEDED.

(a) **A Dealer's Off-licence for Strong Beer.**—"Strong beer" means beer which is sold at more than 1½d. a quart. It includes botanic beer, or liquid brewed from sugar, hops, and water, even without hops or malt, con-

taining more than 2 per cent. of proof spirit. For the purpose of all Revenue Acts and Licensing Acts, "beer" includes ale, porter, spruce beer, black beer, any other beer, any liquid made or sold as a description of beer, or as a substitute for beer; provided that the liquor sold as beer contains more than 2 per cent. of proof spirit.

The licence is issued to people who are not brewers of beer, and only authorises the sale of casks of not less than four and a half gallons or bottles of not less than two dozen reputed quarts at a time (*see* (c) below).

Perhaps it would be convenient to say that a beer-dealer holding an Excise licence such as I have described may also get what is called a **beer-dealer's additional licence**, which will authorise him to sell beer in any less quantity than above to be consumed off the premises. But this additional licence is subject to the grant of the justices' licence first. So that if you want to keep a shop or office for the sale of beer in large quantities, you may open such shop upon getting an Excise licence. But if you want to sell by retail you must get a justices' licence first, and then the Excise licence. The Revenue fee for a dealer's additional licence is £1 5s.

(b) **Dealer's Foreign Wine Licence.**—This is a licence granted by the Excise authorities to sell foreign wine. Foreign wine includes what are called sweets, or made wines; and sweets or made wines mean any liquor made by fermentation from fruit or sugar, either alone or mixed with other material. It is essential that the liquor shall have undergone a process of fermentation in its manufacture. The foreign wine licence also includes mead or metheglin. This licence differs from the dealer's beer licence in that no restriction is placed upon the quantity which may be sold, and that the wine-dealer may sell either wholesale or retail. The licence is purely an off-licence. It is no objection to the obtaining of these licences that the wine-dealer carries on some other business—for instance, that he is a grocer. The fee payable to the Revenue is £2 10s.

So that a grocer who desires to sell wine and sweets or made wines need not apply to the justices. He can merely get an Excise licence and then sell in any quantity, large or small.

(c) **Sweet-Dealer's Licence.**—As I have said, the foreign wine licence included a licence for the sale of sweets, etc., but you can have if you like a sweet-dealer's licence without being licensed to sell wine. You get such a licence from the Excise, and you may then sell the liquors I have before mentioned under the name of sweets or made wines and also mead or metheglin. But you must not sell less than a quantity amounting to two gallons or upwards, or any one dozen or more reputed quart bottles at one time. This entitles you to sell the quantity which would be contained in a dozen reputed quart bottles; for instance, two dozen pint bottles.

(d) **Spirit-Dealer's Licence.**—This is a licence to sell spirits by *wholesale*. "Wholesale" means, in effect, two gallons or more at a time; and it means two gallons of the same spirit and for the same person. Thus, if a man

with a spirit-dealer's licence were to sell one gallon of whiskey and one of brandy to me, he would be guilty of a breach of the law. If I gave him an order for two separate bottles of a gallon of whiskey, one for me and one for Jones, it would be a breach of the law if he executed the order.

"Spirits" means any fermented liquor containing a greater proportion than 40 per cent. of proof spirit. It also includes spirits of any description, inclusive of liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits—for instance, sloe gin.

A spirit-dealer with a wholesale licence may apply to the Revenue authorities for a retail off-licence, which is called **a spirit-dealer's additional licence**. But such an additional licence does not enable him, as in the case of the beer-dealer's additional licence, to sell any quantity. It only enables him to sell quantities of not less than a quart bottle of spirits; or as to foreign liquors a whole bottle of any size, provided it is the same bottle in which the liquor was imported.

It is a condition to the grant of the spirit-dealer's additional licence by the Excise authorities that the premises are occupied for the sale of intoxicating liquors and for nothing else, and have no communication with premises where anybody carries on any other trade or business. Thus, a grocer who had a spirit-dealer's wholesale licence empowering him to sell two gallons and upwards at a time could not get a retail additional licence from the Excise authorities. His only way of procuring the retail licence would be by application to the magistrates first.

(e) **Spirit-Dealer's Retail Liqueur Licence.**—A spirit-dealer, where authorised to sell wholesale, may obtain an Excise licence for the sale of foreign liqueurs. Such liquors must be sold in the bottles in which the liqueurs have been imported, or else in bottles not less than a reputed quart at one time. Here, also, no licence will be granted by the Excise where the premises are used or kept for some other purpose than the sale of intoxicating liquors or where they communicate with such other premises.

(f) **Chemists and druggists** who use spirit in medicine for sick persons must also obtain an Excise licence.

The above is a list of all licences for the sale of intoxicating liquors that can be obtained from the Excise authorities merely on complying with the Revenue regulations and on paying the proper fees for such licences.

In the cases about to be mentioned, which form the real body of this chapter, the licensee must first go before the licensing justices of the borough, city, county or division of a county in which the licensed premises are, or are to be, and must obtain from them a licence authorising him to apply for an Excise licence. I shall call these

JUSTICES' LICENCES.

1. The widest and certainly the most valuable kind of licence is what is called an **Ale-house Licence**, or commonly a Full Licence. Such a licence authorises the sale of spirits, and beer, and wine, and liquor of every kind.

It also authorises the sale of these liquors for consumption both on and off the premises. I may perhaps here interpose the general remark that **all licences authorising consumption on the premises** are justices' licences; and most licences authorising the sale of liquor of any kind, wherever to be consumed, are justices' licences where the sale is by retail.

A justices' licence to sell all excisable liquors by retail, to be consumed on the premises,¹ can only be granted to an innkeeper, ale-house keeper, or victualling-house keeper. I do not mean necessarily that the person who applies for such a licence must already keep an inn, or ale-house, or victualling-house. It is enough if he can satisfy the justices that he intends to keep such place. The value of having a licence of this kind is that the publican who gets it may go to the Excise authorities and obtain from them any sort of licence for the sale of excisable liquor for which a justices' licence is required.

One may ask, therefore, What is an inn, ale-house, or victualling-house? An inn, for the purpose of these Acts, includes ale-house and victualling-house, and includes all houses in which are sold by retail any excisable liquors to be consumed on the premises. On the other hand, victualling-house does not include inn or ale-house; nor does ale-house include inn. For example, where a confectioner had held a retail wine licence for consumption on the premises, he was held to be a person keeping a victualling-house because he used to supply luncheons. I would add that this is the only kind of licence which allows the sale of spirits all the year round to be consumed on the premises. An inn is a house holding itself out to supply lodging and refreshments to travellers and their horses.

2. **Beer On-licence.**—The beer on-licence is probably the next most valuable possession which may be granted to a publican by justices. It is a licence which allows him to obtain from the Excise authorities an Excise licence to sell by retail beer, ale, porter, cider, and perry, for consumption on and off the premises. One may say that all licences which permit consumption on the premises also allow the licence-holder to sell the liquor in question for consumption off the premises.

This kind of licence can only be given to a **householder who is the real resident holder and occupier** of the dwelling-house for which he asks for a licence; and would you say the first requisite to be attended to is that the premises should be a dwelling-house? A dwelling-house, to put it roughly, is a place where someone regularly sleeps. For instance, it was held that where a man had a shop under a railway arch, at which place nobody slept, a beer licence could not be given to him. The next condition is that the person applying for the licence must be the person who is the real resident holder and occupier. To be a real resident occupier means that he must sleep on the premises.

Now it has been contended that a beer licence cannot be granted unless the applicant is himself the owner of the business which is to be carried on upon the licensed premises. A case arose in this way: A brewery company owned a beer-house, which they let at a rent of eight shillings a week to a

woman whom we will call Mrs. Nix ; this woman carried on a refreshment trade upon the premises. She was "tied" as to beer—that is, she could not sell any beer but the beer supplied by the brewery company in question. Her duty was to sell as much of it as she could, hand over the proceeds to the brewery company, and receive from them twelve shillings a week. In effect, she had the house free and four shillings a week over for selling the beer of this brewery company. Mrs. Nix had full control of the premises. She slept there in a room over the beer-shop, and managed the house in her own way.

Once, when applying for a renewal of her licence, it was objected that she was not the real resident holder and occupier. It was said that the brewery company was really the holder and occupier, and as the brewery company was not resident upon the premises no licence could be given. Undoubtedly, the business carried on at the house, so far as it related to the sale of beer, was the business of the brewery company and not the business of Mrs. Nix—she being in effect only an agent for the sale of their preparations. The justices and Quarter Sessions held this objection to be good, and refused to renew the good lady's licence. But on appeal to the High Court it was decided that although the question as to whether the person is or is not the real resident occupier and holder is not a question of law, but a question of fact to be determined by the justices ; yet on the facts as stated by the justices themselves all the evidence went plainly to show that Mrs. Nix was, in fact, the resident holder and occupier. There was no evidence (in law) to sustain the objection that she was not the resident holder and occupier. I need hardly say that if the decision of the justices had been upheld by the High Court, it would have imposed a very great check upon the system of tied houses, so far as those houses are beer-houses and not full-licensed houses.

3. **The Beer Off-licence** is the next in order. This is procurable upon the same conditions—a dwelling-house and the licensee being the real resident holder and occupier—as the beer on-licence. And the beer off-licence holder has the right to sell beer, ale and porter, also cider and perry ; but he must take care that none of such liquor is consumed on the licensed premises.

4. **Licences to sell cider and perry** without beer may also be obtained, and these are obtainable much more easily than the beer licences. Such licences may allow for consumption of the cider and perry both on and off the premises or off the premises only. That is, you may have a cider and perry on-licence or a cider and perry off-licence. The conditions as to the premises being a dwelling-house and the proposed licensed holder the real resident there are the same as with regard to the beer licences.

5. One kind of licence is seldom applied for, and that is the **Table Beer Licence**. This is a licence grantable by justices for the sale in any house or shop of table beer at a price not exceeding 1½d. a quart. This is exclusively an off-licence.

6. The other licences are licences relating to the sale of wines. A **Foreign Wine Off-licence**, which must be granted by the justices, authorises the sale of foreign wine to be consumed off the premises. Such wine must

be sold in bottles of a reputed pint or quart. It may be granted either to a shopkeeper who sells other commodities (e.g. a grocer) or to a person who holds a wine-dealer's licence (*see* p. 1397). A man is not allowed to have this kind of licence in respect of premises where he intends to do nothing but a retail wine trade. He must combine the retail wine trade either with the wholesale wine trade or with some other trade.

7. **The Sweets Off-licence** may be granted under the same regulations as a wine off-licence (*see* 6 above).

8. It very often happens that *a refreshment-house keeper desires to sell wine*. He may be a confectioner who sells lunches to ladies, who occasionally ask for a glass of claret to drink with their lunch. Such a person should apply for a **Foreign Wine On-licence**. This kind of licence authorises the sale of foreign wine for consumption either on or off the premises in any sort of quantity. But it cannot be granted to anybody. It can only be granted to licensed refreshment-house keepers who carry on the trade of confectionery in their licensed refreshment-house or who keep open their houses as eating-houses. By eating-houses are meant houses where animal food or other victuals, with which wine or other fermented liquors are usually drunk, are sold for consumption on the premises. Thus, if a confectioner sells cakes and buns and biscuits, and provides in his shop a place where customers may eat these cakes and buns and biscuits, he may be a refreshment-house keeper.

But a man is not a *licensed* refreshment-house keeper—he needs no licence to carry on a refreshment business—unless he either keeps his shop open after ten o'clock at night or opens it before five o'clock in the morning. As “refreshment-house” is a term which one will meet with frequently, and as a refreshment-house keeper requires a licence if he keeps open between the hours named, it may be convenient to say what is meant by “refreshment-house.”

Such a house is one which is either a whole house, or room, or shop, or building, kept open for **public resort and entertainment**, which is not licensed for the sale of intoxicating liquors. Any house, room, etc., kept for the purpose of selling victual or refreshment to be consumed on the premises (except excisable liquors) is a refreshment-house. This kind of place is a refreshment-house whether it is kept open between 10 p.m. and 5 a.m. or not. It is not necessary to take out a licence unless the house is open after ten at night or before five in the morning, but the person who keeps it may do so.

Also if you have a house, room, etc., where the public are allowed to consume refreshment (except excisable liquors) under a proper licence, the place is a refreshment-house, and the person who keeps it may take out a licence for it. If a man has a refreshment-house of the second or third class, but has not taken out an Excise refreshment licence, he cannot obtain the justices' licence allowing him to sell wine.

A good deal of trouble has arisen over the meaning of the words “**public resort and entertainment.**” A house that is kept open for public resort

and entertainment between 10 p.m. and 5 a.m. ought to be licensed as a refreshment-house. You observe that there must be the two things: namely, both resort and entertainment. And entertainment does not mean a mental entertainment: it means entertainment in the sense in which that word is used in an inscription I have often seen on the outside of country inns—"Good entertainment here for man and beast." There was a house at 30, Bute Street, London, used as a dancing saloon. To this place people used to resort late at night. One of the judges put it this way: "The place in question was a dancing booth. A great many people went there. Some danced, some did not. Some went for the amusement of dancing and perhaps did not have beer. Others did have this amusement of dancing and did have beer. Others went to look on and have beer. Probably some went merely to have beer." The practice was, if anybody at this dancing saloon wanted beer, for him to give money to a waiter, for a waiter to run to a public-house down the street and bring him the beer back. It was not proved that the keeper of the dancing saloon made any profit on the beer, though I suppose if the facts had really come out it would have been found that he had some arrangement with the publican who supplied it.

It was found that this place, where no refreshments were obtainable except by sending outside for them, was not a house of "resort and entertainment." The judges held that "entertainment" must mean practically the same as refreshment—in other words, that a man was not within the meaning of this Act entertained if he were only amused. He was only "entertained" if he had something to eat or drink.

To return to the foreign wine on-licence, a man who keeps a refreshment-house, pursuing therein the trade of confectioner or using the house as an eating-house, may apply for a **Retail Wine Licence**. These retail wine on-licences are not granted so readily as they used to be. Still, they are very much easier to obtain than either the beer licences or the full licences.

9. The licensed refreshment-house keeper carrying on the trade of a confectioner or eating-house keeper may instead of a wine licence get a **Sweets On-licence**. The terms upon which he may get it are exactly the same as the terms upon which a retail wine on-licence may be obtained, except as to the price afterwards to be paid to the Excise.

PREMISES AND PERSONS.

Before applying for a licence, you should be careful to ascertain that both you and your **premises are qualified**. You should also ascertain that neither you nor your premises are disqualified. Where premises are qualified or not depends upon their annual value. It may also depend upon the convenience thereof. For justices will not as a rule grant licences, especially on-licences, unless the premises are suitable both as to accommodation for customers and as to the inspection thereof by the police. But this is a matter with which I will deal later, when I come to the

head of Objections to Licences. Let me deal at present with the question of the **value of the premises.**

Where you have premises which were licensed at the time when the Licensing Act, 1872, came into operation—that is, August 10th, 1872—for the sale of beer or wine for consumption on the premises, a justices' licence cannot be granted for the sale of beer or cider unless the premises are of the annual value of at least £15, if situated in the cities of London and Westminster or within a place or parish within the Bills of Mortality, or within a city, town, etc., where the population exceeds 10,000 according to the last Parliamentary Census, or within one mile measure by the nearest public path from any polling place used at the last election of any town returning a member to Parliament and having a population exceeding 10,000. Where the city, place, etc., has a population of 10,000 or less, but not under 2,500, the annual value of the house must be at least £11. Here also the radius extends not only to the place itself but to a further radius of one mile by the nearest public path from any polling place used in such town, if it is a town returning a member to Parliament. In villages, towns, etc., of a population of not more than 2,500, the house may be licensed for the sale of cider if it is of the annual value of £8. With regard to the licence for the sale of wine to be consumed on the premises in a refreshment-house (*see* p. 1401), the refreshment-house in question must be of the annual value of £20 if situated in a borough, town, or place containing a population exceeding 10,000, or if the population is not more than 10,000 the annual value must be at least £10.

You understand, I hope, that these values only apply to cases where the premises were licensed on or before the 10th of August, 1872, to sell beer or wine for consumption on the premises, or beer or cider for consumption off the premises; or the occupier had on the 10th of August, 1872, a beer-dealer's additional licence which had been granted between the 14th of July, 1870, and the 10th of August, 1872.

If you are applying for a licence for **new premises**, or even for old premises, if they were not already licensed on the 10th of August, 1872, the requirements are much greater.

The justices' licences may not be granted authorising liquors to be sold to be consumed on the premises unless the premises are at least of the following value:

(1) £30 in London, which includes the whole jurisdiction of the London County Council, and within the four-mile radius of Charing Cross.

(2) £30 in urban sanitary districts containing a hundred thousand inhabitants.

(3) £20 in a town with a population not less than ten thousand but under a hundred thousand.

(4) Anywhere else the annual value of the house must be £12.

In the above cases the sums named are only where the licence authorises the sale of beer, wine, sweets, etc. If the licence is a **full licence**—that is, if it authorises the consumption of spirits on the premises—the values, instead of being £30, £20, and £12, must be £50, £30, and £15.

The annual value is what must be taken into account. And the way you arrive at it is by trying to find out what rent the tenant might reasonably be expected to pay if he were to pay all tenant's rates and taxes and tithe rent charges. This sum may be more or less than the actual rent paid to the owner of the premises. Thus, suppose you have a house in a village of five thousand inhabitants, and you want to apply for a licence. To get the beer licence you must prove that your place is of the annual value of £12 or more. Suppose you pay a rental of only £10; this will be conclusive against you, unless your lease is a very old one, or unless you are liable, in addition to your rent, to pay some of what are usually landlord's rates and taxes, and also to do your own repairs to the house or to insure against fire and so on.

For in assessing the annual value you must take the rent with the tenant who does no repairs and who pays none of the landlord's rates and taxes. Therefore, if you have a tenancy agreement by which you are bound to do the repairs of the house yourself you can add the average cost of these repairs to your rent and count that part of the annual value. So, also, if you are under covenant with your landlord to insure the premises against fire, you can add the premium to the rent in order to increase the annual value. But, of course, you cannot add any sum which you pay to insure your furniture against fire. You should also add, in calculating the annual value for the purpose of the Licensing Acts, all the ground and premises occupied by you with the house. I do not mean, of course, a whole farm or anything of that sort; but you may include pleasure grounds, or flower- or kitchen-gardens, or a yard, stable, etc. You cannot include these grounds or stables if you have sublet them to somebody else, but only if you use them with the house and as part of the convenience of the house.

It ought to be pointed out that **an old ale-house**, by which I mean the full-licensed house, is not subject to any requisite of valuation whatever. By an old ale-house I mean one which was fully licensed to sell all sorts of intoxicating liquors (*see* p. 1398, No. 1) on the 10th of August, 1872, at which date a new Licensing Act came into operation. Owing to the difficulty of dealing with these old licensed premises, which are in a manner vested with rights, the justices in many districts do their best to get rid of them. Thus justices will readily permit a licence-holder with an ale-house licence dated before the 10th of August, 1872, to have a licence for a new place if he gives up the old licence; because in respect of the new place they can impose more conditions and see that the house is a suitable one.

The licences that are numbered *c*, *d*, and 7 in the list of licences on pp. 1397 and 1401 are **not required to have any valuation qualification**. Nor need the premises of a dealer in strong beer be of any special value though he holds an additional licence for sale by retail, provided only that he held his additional licence on the 14th day of July, 1870, and that this licence has been renewed ever since from time to time. When I say that he must have held it ever since July, 1870, I mean either he or some other person, his predecessor in the occupation of the premises, must have held it. For the privilege attaches to the premises, and not to the

individual who happens to hold them at any particular time. Premises are disqualified by reason of the fact that the licence held by some previous tenant has been endorsed with convictions for offences against the Licensing Acts.

In the first place, as I shall show presently, when a licensed person is convicted of certain offences his licence may be forfeited. Now if **two licences have been forfeited within two years** by the people licensed to sell on the premises in question, the premises are disqualified for one year from the date of the last forfeitures.

Take an example. The Spotted Dog is a public-house in a low part of the town. It is liable to be invaded by some very rough customers, to whom the landlord finds it difficult to deny drink even when they are drunk—probably more especially when they are drunk. In one way and another the unfortunate licence-holder finds himself before the magistrates, who say to him at last, “Mr. Stout, your licence is forfeited.” Let us suppose this lamentable event occurs on the 20th of June, 1900. The owners of the public-house promptly look round for another tenant, and find one in the person of Mr. Porter. Mr. Porter finds a difficulty in carrying on the trade of The Spotted Dog without coming into perpetual collision with the magistrates. And magistrates, as every licence-holder knows, do take such extremely hard views of things. And so it befalls that in July, 1901, Mr. Porter being up before the local Bench for the fourth or fifth time, the chairman of the Bench pronounces that Porter’s licence is also forfeited.

Well, that is the end of The Spotted Dog for at least one year; and not even the Archangel Gabriel, much less any merely terrestrial person, could obtain the grant of a licence for The Spotted Dog until twelve months have elapsed after Mr. Porter’s licence was declared forfeited. This statement is made subject, therefore, to the following qualification:—

Where any offence is committed by a **licence-holder who is only the occupier and not the owner** of the licensed premises, the Clerk of the Court must give notice to the owner of the premises if the offence is one a repetition of which may cause the licence to be forfeited. Then, if it afterwards happens that the offence is repeated and the premises are disqualified for a period, notice must be given to the owner of the disqualification of his premises.

The owner is given a date on which he can appear before the magistrates and appeal against the order, which virtually deprives him of a valuable property. **He can appeal on any one or two or three grounds.** The *first* is that no notice was served on him of the prior offence. The *second* is that the tenant who committed the offence held the premises under a lease or contract made before August 10th, 1872; and that he (the landlord) could not turn him out, even though he knew that the tenant was behaving badly and had been convicted of an offence which would, if repeated, probably cause the licence to be forfeited. The *third* ground is that although notice of the first offence was served upon him, yet the final offence was committed so soon after the first offence that he (the owner) was not able to exercise his legal power to turn the tenant out.

If the owner of the premises proves any of these three grounds to the satisfaction of the magistrates he is **entitled to have the disqualification removed** from his premises. And, as a rule, it is not difficult to convince the magistrates; unless the public-house in question was a notoriously bad one, or the offences proved were of a particularly gross and flagrant kind.

The next things of which we ought to treat are the **qualifications and disqualifications of persons** applying for licences. Roughly speaking, anybody may apply for a licence to sell intoxicating liquor. The only exception is where a man applies for a beer or cider licence (retail). In this case the applicant must show, as I have stated, that he is the resident occupier of the house in respect of which he is applying. That is the only time when an applicant for a licence has to prove that he is a qualified person.

But the police or anybody else may oppose an applicant on the ground that **he is disqualified**. For example, a *sheriff's officer* or officer executing the legal process of any court of justice is not allowed to have either a full licence, or a beer retail licence, or a cider licence, or a foreign retail wine licence, or a sweets licence.

A *person who has been convicted of felony* since the date of the Beer House Act, 1840, may not get a retail beer or cider licence. If he was convicted since 1860 he cannot get the retail wine licence. The same prohibitions apply to a person who has been convicted of *selling spirits without a licence*. If a person who has been convicted of selling spirits without a licence can manage to get an ale-house licence granted to him by the justices, the ale-house licence is valid for the year.

The legislature seems to have somehow a notion that only people of good character shall be allowed to sell spirits by retail. For a person convicted of felony is disqualified for ever after from selling spirits by retail unless he should receive free pardon from the Crown. If a man is caught and twice convicted for selling or exposing for sale by retail liquor which he is not entitled by licence to sell, or at any place which is not licensed, the Court may order him to be disqualified for five years from holding any liquor licence whatever. Suppose, however, a man has been twice convicted, let us say, of selling beer by retail when he only had a cider licence, and on the second occasion the justices fine him but do not disqualify him. He takes no warning by his narrow escape, but commits a third offence. He is caught as usual, convicted; and then he runs the chance of being disqualified for the rest of his life from holding any liquor licence. The justices may not make the disqualification a "lifer," but may fix some term of years.

A man who holds a licence and has *two convictions* against the Licensing Act recorded on that licence against him, and is then for a third time convicted and the offence is ordered to be recorded on his licence, is *ipso facto* disqualified from holding any justices' licence for five years from the date of the third conviction. And it may be noted that offences with relation to the adulteration of drink are for this purpose licensing offences.

I deal more fully with the question of offences and their consequences in a subsequent chapter.

LICENCES OF A MINOR KIND.

As most people know, there are such things as **Six-day Licences and Early-Closing Licences**. What are these? and how do they come about? To begin with, they arise practically voluntarily. That is, any person who applies for a new licence or for a transfer or a renewal of an existing licence may ask the justices to insert a condition that he shall keep his premises closed during the whole of Sunday. The advantage to a person who has a six-day licence is that he gets off with only six-sevenths of the Excise licence duty. The disadvantage is that if he sells any liquor on Sunday, even to a "*bonâ fide* traveller," he is selling without a licence, and is therefore liable to the heavy penalties imposed by the Licensing Act, 1872, upon people who sell intoxicating liquor without a licence (*see* p. 1388).

An idea is abroad in the minds of some people that a publican cannot close his house on Sunday or at any other time when the law authorises him to keep open unless he has a six-day or an early-closing licence. That is to say, that a publican with a six-day licence must keep open the whole of the authorised hours on the six days, and that a publican with a seven-day licence must keep open during the whole of the authorised hours throughout the week. This is **quite a mistake**. A publican (unless he is an inn-keeper) is not obliged to open his premises at all. He is in exactly the same position as any other trader with regard to closing his house. If I have a seven-day licence for the sale of intoxicating liquor and I think proper to close my shop on Saturday, Sunday, and Monday in every week there is no law to prevent me.

The mistake has arisen from confusing the public-house with the inn. The **common inn-keeper is bound to keep his premises open** at all times—not for the sale of drink, necessarily, but for the supply of refreshment to persons entitled to demand it. But it is not every person who has the right to demand refreshment at an inn. An inn is a house carried on for the entertainment of travellers and their beasts by which they travel. Nor has any person other than a traveller the right to demand, as matter of law, that he shall be taken in and entertained. If a common inn-keeper chooses to take a six-day licence and a traveller comes to his house on Sunday and demands to be received and entertained, the inn-keeper cannot refuse to take him in or to supply him with refreshments. The only thing the inn-keeper in such a case can refuse to supply him with is intoxicating liquor.

It is, moreover, somewhat difficult to see why anyone should voluntarily take a six-day licence when he can give himself a day of rest of his own accord if he chooses. In my experience I have generally found that a six-day licence is taken only by a man who is practically bound to take it. Thus there are some land-owners who will let a man a house to be kept as a public-house or an inn only upon condition that he does not sell liquor on Sunday.

I want you to understand that **the justices cannot compel you to take a six-day licence**. On the other hand, if you ask for a six-day licence they

cannot compel you to take a seven-day licence. But I have always found that, upon application for a renewal or a new licence, if the justices have made up their minds that the applicant shall close on Sunday they can generally enforce their wishes. For they can give the applicant a broad hint that they will refuse his application altogether unless he applies at the same time to have a condition inserted in his licence that he shall not sell any liquor on Sunday. You see, justices have an absolute discretion to grant or refuse either a new licence or a renewal of one (except 1869 wine and beer houses). It is therefore practically within their power, though not theoretically, to compel a man to have a six-day licence. If he chooses, of course, he can say that he will not take any licence if he is not to have one for the whole seven days.

Although in law the acceptance of a six-day licence is a voluntary act on the part of the licensed holder, yet when a man has once taken a six-day licence it is no longer within his power to demand a seven-day licence. There has been a series of very curious cases in which publicans have tried to break down the discretion of the justices. The first of these cases was from Kirkdale, where William Parry and Mary Welsh held a six-day licence. At the Annual Licensing Session this licence was renewed as a matter of course, there being no opposition. But Mr. Parry and Mrs. Welsh applied at the same Session for a new licence for the same premises without the Sunday-closing condition. A clergyman and others opposed the application for the new licence, their ground of opposition being that they objected to the sale of liquor on Sundays. The justices decided that upon this point they had no power to hear an objector; because the Sunday-closing condition could only be inserted at the request of the applicant himself. The justices thereupon granted the seven-day licence, exercising their discretion, and then the clergyman and his friends applied to the High Court for an order to compel the justices to hear the application again and to hear their objection. The High Court refused to do this, upholding the licensing justices in their decision that as the Sunday-closing condition could only be inserted at the request of the applicant, therefore no member of the public had any right to object to the proposed new licence on the ground that it was intended to keep the place open on Sunday.

Somehow the liquor interest got it into their heads that upon the strength of this decision any man who had a six-day licence granted to him originally could get it renewed as a seven-day licence for the asking; that if he applied to have the licence renewed and said, "I do not want the Sunday-closing condition to be inserted in the renewal," the justices must leave out the Sunday-closing condition or else refuse the renewal altogether. You see, this would have interfered very considerably with the discretion of the licensing justices.

There was a case in Somersetshire where the licensing justices for the Crewkerne district had an application before them for the grant of a new licence. The applicant stated that a house of refreshment was specially wanted for the convenience of persons attending a certain market. His

proposed house was close to this market. And he succeeded in convincing the licensing justices that it would be for the convenience of the market classes for his premises to be licensed for the sale of liquor. But the magistrates said they did not feel justified in giving a full seven-day licence. The market was not open on Sunday; therefore the class whom the applicant said he was going to cater for could not have the slightest use for the place on that day. But as they had no power without an application from the applicant himself to insert the Sunday-closing condition, they put it to him that if he applied for a six-day licence they would be fully disposed to grant it, but if he applied for a seven-day licence they would be disposed to refuse it. The applicant wisely contented himself with asking for a six-day licence, and this he obtained.

Next year, however, when the time came for his licence to be renewed and the justices renewed it as a six-day licence, the publican objected. He said, "You have no right to put in the Sunday-closing condition unless I ask you to do so. I do not ask you to do so. Therefore this condition which you have inserted in my licence is invalid." He cited the Kirkdale case in support of his contention; and when the licensing justices declined to listen to his argument he appealed to the High Court on the point of law: that as he had not applied (in his application for renewal) to have the Sunday-closing condition inserted, therefore the magistrates, when they had granted him the renewal and in that grant inserted the obnoxious condition, were exceeding their powers.

Unfortunately for this publican, the presiding judge of the Court to which he appealed was Mr. (now Lord) Justice Mathew. That learned judge has, ever since he was at the Bar, been noted for a grand contempt for hair-splitting and technicalities. He observed that it was quite obvious the licence would never have been granted in the first place except as a six-day licence. If that were so, then the applicant, if he intended at the time to try to convert his six-day licence into a seven-day licence at the first renewal, was simply playing a trick on the licensing justices—a trick to which he (the learned judge) could not give any assistance. And it was laid down then and there, and the Court of Appeal confirmed it, that when a licence has been originally granted as a six-day licence, the renewal of that licence is a six-day renewal.

To put it another way, if you have got a six-day licence at your own request it no longer lies in your power to object to the Sunday-closing clause.

Foiled in this attempt, the liquor interest tried in another direction. A public-house at Liverpool had originally been licensed with a seven-day licence. Subsequently the publican applied to have the Sunday-closing clause inserted; and as the licensing justices had no power to refuse his application his seven-day licence became a six-day licence accordingly. So it went on being renewed as a six-day licence for three years. Then the publican objected, at the fourth time of renewal, to the Sunday-closing condition being inserted. The Liverpool justices declined to renew except as a six-day licence; and this publican also appealed.

He said that his case was different from the Somersetshire case; because in

the Somersetshire case the licence, as originally granted, was a six-day licence. In his case the original licence had been a seven-day licence, and the Sunday-closing clause had been inserted subsequently. But again the High Court declined to listen. The judges of the Queen's Bench Division declared the law to be that when a licence which comes up for renewal is a six-day licence, no matter how it became such, the justices may renew it as a six-day licence without the consent of the licence-holder.

Next as to **Early-closing Licences.** An early-closing licence means a licence empowering and compelling the holder thereof to close his premises one hour earlier than the limit allowed by law in that district. Thus, an early-closing licence in the Metropolitan district would mean that the licence-holder, instead of closing at half-past twelve from Monday to Friday, would be obliged to close at half-past eleven; that instead of closing at twelve on Saturday night he would be obliged to close at eleven. An early-closing licence in a town where the closing time is eleven would compel the licence-holder to close at ten.

Most of what I have said about six-day licences applies to early-closing licences also. The applicant for the licence may apply, either when the licence is first applied for or at any renewal thereof, for a condition to be inserted binding him to close one hour earlier than he would otherwise be compelled to. If he applies, the justices must insert the condition. In strict law the justices have no power to compel a publican to take an early-closing licence, any more than they can make him take a six-day licence. But they can compel him to do so indirectly, as they can in the other case, by hinting to him that unless he does apply for the early-closing condition he will not get any licence at all. The holder of an early-closing licence, just as the holder of a six-day licence, only pays $\frac{1}{4}$ ths of the Excise licence duty. Again, once the condition is inserted the justices cannot be compelled to remove it; but if they simply say at each Licensing Session, "We renew this licence," the effect is to renew it as an early-closing licence.

The only difference between the law as applied to six-day licences and early-closing licences is that an application for the Sunday-closing condition may be made when a licence is first applied for or renewed or transferred. An application for the early-closing condition can only be made when a new licence is granted or a licence is renewed—not when a licence is transferred. I do not know whether there is any reason for this. I suspect the word "transfer" was left out by mistake when the section referring to early closing was passed.

As I have said before, I do not see why anybody of his own accord should ask for an early-closing condition. I know that in the past people have applied for the early-closing condition under the impression that if they did not procure this clause in their licences they were compelled to keep open up to the legal limit of time. This is a mistake. There is no call whatever on anybody except a common inn-keeper—a person who is becoming more rare every day—to keep open his place up to any particular hour or at all

A licence to sell intoxicating liquor simply means what it says. The word "licence" is always used by lawyers to mean a permission to do something which would be illegal if that permission had not been obtained. Thus, I must not walk on your field. If I do I commit a trespass. But if I come to you and ask permission to walk across your field and you grant it, this is a licence to me to walk across the field. But the effect of that is not to compel me to walk across the field. It only means that if I do so walk I am not guilty of a trespass. In exactly the same way, a man who sells intoxicating liquor is guilty of an offence for which he can be heavily punished unless he has a licence from the justices (in some cases) and from the Excise authorities (in every case). But the only effect of the licence is to render legal what would be illegal if the licence had not been obtained. Therefore, if you are a publican and you think at any time that you would like to close your shop at two o'clock in the afternoon you are quite at liberty to do so, and will not by doing so render yourself liable to any penalty or punishment.

I was told not very long ago that in a district of a certain town there were grocers who held off-licences for the sale of spirits or beer or some other intoxicating liquor who refused to join their fellow-tradesmen in a movement to close all shops at two o'clock in the afternoon one day in the week. These people alleged as their excuse that they had not power to close their shops because they were licence-holders. I assume that they were making this excuse in good faith. If so, let them have the consolation now of knowing that they can close their shops at two o'clock on every day of the week if they wish to do so. In fact, they need never take their shutters down again unless of their own accord.

It is quite possible for a licence to be granted to sell intoxicating liquors on premises which are not licensed. But this can only be done by an **Occasional Licence**. An occasional licence is one that is granted to a person who already holds a licence for the sale of liquor to sell such liquor at some temporary establishment for some particular purpose or on some particular occasion. For instance, the local Agricultural Society is going to hold its annual show in a field. The Society approach a hotel proprietor and ask him if he will put up a tent on the ground and sell refreshments. Of course, he has no right to sell intoxicating liquors on the show ground merely because he holds a licence to sell them elsewhere. But, as a rule, he will find it easy to get a licence from the local justices authorising him to sell.

The procedure is for him to go to the **Local Petty Sessions** of the division where the proposed place of sale is situated—that is, to the Petty Sessions district in which the show ground is. He can apply to a single Justice of the Peace, tell him the circumstances, and ask for an occasional licence. If the justice grants him that licence, he then goes to the office of Inland Revenue and takes out an occasional Excise licence, paying at the rate of 2s. 6d. a day for the time the occasional licence is to extend.

Now there are **two kinds of occasional licences**. The first is one that may be granted to a person occupying a common inn, ale-house, victualling-

house—that is, to a man who has the full ale-house licence; and also to a man who is licensed to sell beer, spirits, wine or tobacco. Such a person may have an occasional licence granted to him for a period of **not more than six consecutive days** at any one time. He is not to be authorised to sell on Sunday or Christmas Day or Good Friday, or on any day set apart by authority as a day of public fast or thanksgiving. The hours during which he may sell under his occasional licence are to be fixed by the justice who grants it. But the justice may not allow him to begin selling at an hour earlier than sunrise or to shut later than ten o'clock at night. The only exception with regard to hours is that when the publican wants a licence in respect of a public dinner or ball a justice may extend the hours to any time he likes. When a licence-holder is going to have a ball or public dinner on his own licensed premises and *wants to keep open later* than the proper hours of closing, he ought to apply to the nearest Justice of the Peace for an occasional licence for that purpose.

The second kind of occasional licence is one which may be granted to the holder of a refreshment-house licence or a person having an on-licence to sell wine or beer by retail. But, for some reason or other, occasional licences to these persons may only be for **three consecutive days**—not six, as in the case of the publican. As to all other matters—hours of closing and so on—this second licence is the same as the other. So that if the local Agricultural Show is to last (say) four days, the committee will have to engage a publican to provide refreshments—not a mere refreshment-house keeper.

I ought to say that a man who holds an occasional licence must **produce it on demand** to any Excise officer or constable or police officer who asks to see it; also that offences of all sorts are the same and have the same consequence if committed under an occasional licence as if committed on licensed premises under whatever conditions.

The owners of **passenger boats** which ply between one part of the United Kingdom and another—or between any ports, starting and returning the same day—may also obtain licences for the sale of all sorts of excisable liquors. Such licences may be granted at any time of the year, but they terminate on the 31st of March. They are purely Excise licences, and no application to Licensing Sessions is required.

They are granted either to the master or commander of the boat, or to some other person nominated by the owner or director thereof in writing. They are transferable without anybody's permission, the original holder, or if he is dead his executors or administrators, endorsing the licence on the back in favour of some other person nominated in writing by the ship-owner. And if the boat in respect of which the licence was granted should be lost or broken up, then the licence may be transferred to another vessel of the same kind run by the same owners.

IN SCOTLAND these licences are granted only for weekdays; Sunday-closing is strictly enforced where the boat starts and returns on the same Sunday.

By way of making provision for the refreshment of soldiers and sailors,

any person who is authorised by the Secretary of State or by the Admiralty to hold a canteen may procure a licence from two justices of the district—not the licensing sessions—at any time of the year and without any notice. In fact, **canteen licences**, alike as to granting them and renewing them and transferring them, do not come under the Licensing Acts at all.

Music-halls and theatres stand on a different footing with regard to the sale of intoxicating liquors. A theatre is a place for the production of stage plays, and cannot be opened or kept open without either letters patent from the Sovereign or licence from the Lord Chamberlain or from the County Council. The Sovereign may grant letters patent to any theatre at any time; but I believe a patent is not obtainable in these days. There are one or two old theatres, such as Drury Lane, which are called patent theatres, and have been patent theatres for many years. Excepting these, the Lord Chamberlain has power to grant licences to hold theatres within the Parliamentary boundaries of London and Westminster, Lambeth, Southwark, Finsbury, and Marylebone, and places where his Majesty occasionally resides. This, in effect, means places where the King has a royal residence, such as Windsor, Osborne, Sandringham.

In other places, the County Council has the granting of theatre licences. This power is generally committed to a licensing committee which reports to the full Council. The licensing committee and the Council have a discretion as to the granting of theatre licences; and they may, if they please, refuse to grant a licence unless the proprietor of the theatre undertakes that he will not apply for a drink licence. They may even attach a condition to the theatre licence that the owner thereof shall not apply for a drink licence.

But where a theatre proprietor has obtained a theatre licence without any condition, he may forthwith apply to the Revenue authorities for a licence to sell intoxicating liquors in the theatre. He does not have to apply to the licensing justices at all. And except that the County Council may impose restrictive conditions upon him, a theatre proprietor is not under any responsibility to the licensing authorities.

Music-halls where stage plays are not performed are **subject to the ordinary licensing law** as to the sale of intoxicating liquor. When I say "subject to the ordinary law," I mean that they have to obtain from the licensing justices a licence for the sale of liquor. They must also obtain a special licence called a music and dancing licence.

Music and dancing licences must be obtained by anyone who wishes to have music or dancing in any house, room, garden, or other place kept for public entertainment or resort. This provision applies not only to places licensed for the sale of intoxicating liquor, but to all other places. That is to say, a publican can have a dancing or music licence, or both, and so can any other person. The law in question is different according as to where the place in question is—in London or Westminster, or within twenty miles thereof, or the administrative county of Middlesex or some other part of England.

I will first deal with what I will call **provincial music and dancing licences**—that is to say, not referrible to the London district or to the county of Middlesex. Until the year 1890 there were no regulations, excepting in London and Middlesex and the London district, as to houses, rooms, etc., kept and used for music and dancing. Even now **the law does not apply universally**. It only applies where the local sanitary authority—that is to say, the Borough or District Council—has adopted Part IV. of the Public Health Act, 1890. When a local sanitary authority has adopted Part IV. of that Act, at the end of six months after such adoption the law which I am about to tell of comes into force within the district of that sanitary authority. It can be adopted by all urban sanitary authorities (*see* p. 1293), and by such rural sanitary authorities as have urban powers (*see* p. 1293).

It is sufficient to say that where Part IV. of the Public Health Act has been adopted and six months have elapsed since such adoption, no person may keep or use for public dancing, singing, music, or any other public entertainment of the like kind, a house, room, garden, or other place without a licence. You will observe that this only applies to public dancing, etc. It has no application except to **houses, rooms, gardens, and the like where the public are admitted**. I do not mean that it applies to every kind of place except a private house. When one talks about a place being public in this sense, one means that it is a place to which anybody is admitted, either gratuitously or on payment for admission. Thus, if I have a room in which I periodically or occasionally hold concerts to which I admit everybody free of charge, that is a room within the meaning of this law. If I have a hall where I hold what in some places are called “assemblies,” and where I admit anybody who chooses to pay a shilling for admission and who wears an evening coat, and there I allow dancing to take place, it is a place within the meaning of this Act.

But if I am **a dancing-master** and hire a room for the use of my pupils only, such pupils not being all persons who choose to come and pay at the door, but only people who have entered into an arrangement with me to take lessons, that is not a public dancing-room within the meaning of the Acts to which I am referring. And suppose I have a dancing class and at the end of the season I give a ball for the benefit of the pupils and allow each pupil to bring one or two friends—it must be a limited number—still the room in which the ball is held is not a public dancing-room within the meaning of the Act.

You see also, that the place must be **kept or used for the purpose** of music, singing, dancing, and so on. By this is meant that the room, or garden, or house, or hall is not merely used once. One swallow does not make a summer, neither does the mere using of a hall once or twice for a musical entertainment or dance to which the public are admitted make the place a public room. But if the place is used periodically, though not regularly, for this purpose, then a licence must be obtained. Moreover, the music, etc., must be part of the entertainment which is offered to the public

or is allowed to take place in the room. The mere fact that a man chooses to sing a song in a public room at a public meeting does not make that place one which must be licensed as a music room. Thus, if I have a room where I give lectures on a variety of subjects, and on one occasion or more the audience choose to express their approval of my proceedings by singing "For he's a jolly good fellow," that does not make the place a public music room. But where you have music regularly served up as part of the "show" then a licence is necessary. For example, when a man has a skating-rink and engages an orchestra to play while his patrons are skating, the music is one of the attractions of the place and is part of the inducement to go to the rink; and the rink requires a music licence.

Music and dancing licences are applied for, granted, renewed, and transferred exactly in the same way as licences for the sale of intoxicating liquor (see Chap. II.).

The justices granting such a licence, whether a new one or a renewal of an old one, may impose conditions or terms. Thus, if they think the applicant ought to make better provision for the ventilation of the room, or something of that sort, they are at liberty to request him to undertake that he will do so. Two conditions they are bound to affix: namely, (1) that he shall paint up on the outside of the premises near the door, in a conspicuous place, the words "Licensed in pursuance of Act of Parliament for music" (or dancing); (2) they must also put in some condition as to the hours during which the place may be kept open. And if the holder of such a licence disregards the terms thereof, he is liable to a fine of £20, with an additional £5 per day for every day during which his offence continues. That is to say, if he does not paint up over the door the words given above he is liable to pay a £20 fine, and £5 for every day during which the words are not painted up. A room of this kind is not to be kept open on Sundays, Christmas Day or Good Friday, or on any other day properly proclaimed as a day of public fast or thanksgiving. So much for the law generally all over the provinces.

In the City of London and the City of Westminster, and within the radius of twenty miles thereof, the power of licensing places for music and dancing is in the hands of the London County Council. But out of this jurisdiction are excepted such parts of the county of Middlesex as do not lie within the London County Council area. Thus Hornsey, though it is within twenty miles of London, is not under the London County Council in this matter, because it is within the administrative County of Middlesex, which has a separate law of its own. But Islington, though in Middlesex, is not within the administrative county of Middlesex, and is subject to the London County Council.

The law relating to music and dancing licences in London dates back to George II. In the reign of that moral monarch it was discovered that there were a great many houses in the vicinity of London where music and dancing used to take place, and where scenes by no means creditable to anybody were enacted. Public attention having been called to the matter by

one or two highly disgraceful disturbances, the result was the passing of the Disorderly Houses Act. For the first time it was then enacted that every house, room, garden, or other place kept or used for public dancing, music, or other entertainment, should be considered a disorderly house, unless the **place was duly licensed** for the performances by the justices. The power of the justices has since been transferred to the London County Council.

The **penalty** in London for permitting music and dancing in contravention of the Act is a heavy one—no less than a maximum penalty of £100. All that I have said as to the meaning of “public” with regard to provincial places of resort applies equally to places in London.

The London County Council sit about **Michaelmas in every year** to hear applications for music and dancing licences. When they so sit they are not a judicial body. One of them discovered this to his cost, after he had made certain observations about somebody which were of a highly defamatory character. The man who was defamed brought an action for slander, and the County Councillor pleaded that when he made the remarks he was sitting as a judge. If he had been so sitting he might have said anything he liked with impunity; for it is one of the privileges of a judge, as it is of a lawyer appearing before a judge, to say anything he likes about anybody in the world without running the risk of an action for defamation of character. The Court, however, decided that the County Councillor in question was not sitting in a judicial capacity, and therefore that his remarks were not judicial utterances. One result of the decision that the County Council is not a judicial body when sitting on music and dancing licences is that the Council cannot take evidence on oath.

But although the Council is not a judicial body it must act judicially, in the same sense that a committee of a club must act judicially if any charge is made as to the conduct of a member. Thus the Council cannot refuse a music licence without **hearing fully the person who applies** or his counsel or solicitor who represents him. If it be proved that one of the members of the Council is interested in a pecuniary sense, no doubt proceedings in the High Court could be taken to compel the Council to do its duty.

A person who holds a music or dancing licence in London or within twenty miles thereof (except Middlesex) must paint up near the door in a conspicuous position the words, “Licensed pursuant to Act of Parliament 20th of King George II.” This is one of the conditions of his licence. Another condition is that he cannot open his premises before noon and must close them at midnight. By which I mean from twelve noon to twelve midnight are the only hours that he can have his premises open for the purpose for which he is licensed. He can, if he chooses, use the room or garden or other place for some other purpose at any hour.

Moreover, the holder of a music or dancing licence is able to go to a justice or police magistrate and procure an occasional licence, which is like the occasional drink licence; it authorises the holder thereof to keep his place

open for music or dancing beyond the hours mentioned in his regular licence.

The Disorderly Houses Act is very strict upon this subject of music and dancing licences. If the conditions on which it is granted are broken the licence is forfeited. In such a case it cannot be renewed; nor can the man who held it procure such a licence for another room or place.

Now as to the **administrative county of Middlesex**. Here also the County—I mean Middlesex County—Council, and not the licensing justices, grant music and dancing licences; and it is an offence to keep or use any house, room, garden, or other place for public music, dancing, or other like entertainment without the licence of the Middlesex County Council. But the Middlesex Council is not restricted to the granting of these licences at any one meeting in the year, as the London County Council is. The Middlesex Council may grant a licence for music or dancing at any meeting of the Council, provided that meeting is one of which fourteen days' notice has been given to the members. Moreover, a fee of five shillings is payable to the clerk of the Council by the person who obtains the licence—except when the licence be granted to somebody for the purpose of holding some charitable entertainment. Here also all houses must close at midnight and not open till noon next day, unless the holder has procured an occasional licence in the manner above described.

The penalty for keeping a music or dancing place without a licence is not anything like so severe as in London and district, being only £5 a day.

Billiard licences (which include licences for bagatelle) may also be obtained by people who are not publicans or beer-house keepers. A publican who has an ale-house licence, commonly called a full licence, may keep a billiard table without a special billiard licence. But any other person—for instance, a man with a beer licence only—may not keep a billiard table, a bagatelle board, or any other like instrument unless he has a licence to that effect granted by the licensing justices at the annual general licensing meeting.

To apply for such a licence you must take the same steps that you would take in applying for a liquor licence—that is, you must give the notice to the overseer and superintendent of police specified in Chapter II. And if you want to transfer your billiard licence you may apply at the special sessions and give the same sort of notice that you must give if you want to transfer a liquor licence. Billiard licences are renewable from year to year at the licensing sessions, and no notice need be given to anybody on applying for such a renewal.

So far, you see, the procedure as to the granting and renewal of billiard licences is very much the same as in the case of liquor licences. But in one important particular there is a great difference. If the licensing justices refuse to grant or to renew a billiard licence you have **no appeal whatever**. I do not know whether this was intentional on the part of the legislature; but whether intentional or not, it is quite certain that the right of appeal was

not given to billiard licence holders. And as no right of appeal was given the decision of the licensing justices is final and conclusive.

A billiard licence is **subject to six conditions**. The first is that the licence-holder shall keep painted up in a legible manner outside the licensed place the words "Licensed for billiards." If he does not keep it painted up he is liable to a penalty of £10 a day or one month's hard labour. The second condition is that he shall not permit drunken or disorderly conduct on the premises. The third is that he may not knowingly permit the consumption of excisable liquors on the premises. Note the word "excisable." Beer is not an excisable liquor. Therefore, the holder of a billiard licence, though, of course, he may not sell beer to his customers, is not bound to see that they do not bring it on his premises and consume it there. He is bound to see that they do not bring spirits on his premises for consumption.

The fourth condition is that the licence holder shall **not knowingly permit unlawful games*** in the room or rooms licensed for billiards or upon his premises at all. In the fifth place, he must not allow to assemble at his rooms notoriously bad characters; and in the sixth place he must close on Sundays, Good Friday, and Christmas Day, as well as on every day lawfully set apart as a public fast or thanksgiving day. The punishment for breaking any of the conditions numbered two to six inclusive is that the holder of the licence may be punished in the same way as a publican who allows unlawful games to take place on his premises.

There is one rather curious, and indeed anomalous, thing about **the hours during which premises licensed for billiards may be kept open**. The publican who has a full licence (in which, as I have said, a billiard licence is included) may not allow billiards to be played in his house after the ordinary closing time. I mean, after the hour at which his premises ought to be closed for the sale of intoxicating liquors. Thus a publican with a full licence in London must absolutely shut his billiard room at 12.30 on ordinary days. He must not even allow a lodger or guest staying in the house to use the tables. If he does he will be liable to punishment for permitting unlawful games.

But compare the position of that publican with the position of any other holder of a billiard licence. The billiard licensee's hours are from 8 in the morning to 1 o'clock the next morning. That is, he must shut his billiard room at 1 a.m. and not reopen it until 8 a.m. Up to 1 a.m. he is entitled to allow his billiard table to be used. Now a beer-house keeper holds under an ordinary billiard licence. Therefore a beer-house keeper who has a billiard licence may keep his billiard room open until 1 o'clock in the morning; though his house must be closed as far as the sale of intoxicating liquor is concerned at 12.30 in London, 11 o'clock in large towns, and 10 o'clock in small places. Suppose, therefore, that I go to a country town where the closing hour is 10 o'clock for public-houses, and I put up for the night at a full-licensed house where there is a billiard table. I have a friend with me, and

* As to what games are unlawful, see Chap. III.

we are both keen billiard players. At 10 o'clock we must turn out of the billiard room. But suppose we go to put up at a public-house which has only a beer licence, but the landlord also holds a billiard licence. My friend and I can sit up and play until 11 o'clock in the morning. And as the prohibition concerning the sale of liquor after 11 o'clock does not apply to lodgers in the house, we can not only play at billiards but drink beer all the time. It seems rather curious that the keeper of a billiard table in a beer-house should be able to keep his table open later than the keeper of a full-licensed hotel.

The fee for a billiard licence is five shillings to the clerk to the justices, and a fee of one shilling for the constable who serves the notices.

IN SCOTLAND

the law is the same in so far as it requires that all persons who sell intoxicating liquor shall hold an Excise licence. These Excise licences are the same as the English Excise licences (*see* p. 1596). The law is also the same in that it requires persons who sell liquor by retail to hold a licence from the magistrates, who may be either county justices or burgh magistrates. In the latter respect the Scottish law is a little more systematic than English law. No person is allowed to sell wine, spirits, porter, beer, ale, cider, or perry by retail without a justices' licence. It does not matter in what quantities the liquors are sold so long as they are sold by retail. Nor does it matter whether licences are of the kind permitting consumption on the premises or only consumption off the premises.

There are in Scotland **three kinds of retail licences**, each with three subdivisions. These licences vary according as to where the persons holding them are inn-keepers, publicans, or merely dealers in spirits or people who trade in spirits as well as other things. The licences are called:

- (1) Inn and Hotel Licences.
- (2) Public-House Licences.
- (3) Grocers' Licences.

Inns and hotels are places which are not merely drink-shops: they are places where accommodation for travellers is provided. And as the inn and hotel licence is rather more beneficial to the holder than a publican's licence, the Act of Parliament provides that the accommodation for travellers shall be really **substantial accommodation**. In England there is no definition of an inn further than that it is a place where accommodation for travellers and their horses is provided. So that a man may keep an inn if he has a stable with accommodation for one horse, or a paddock into which horses may be turned to graze, and one bedroom; indeed, he need not have a bedroom which is specially set apart for travellers. It is still an inn if he holds himself out as being ready and willing to take in travellers; and his place is still an inn if, when a traveller presents himself and asks for a night's lodging, the inn-keeper would be obliged to turn one of his family out of a bedroom to make room for the guest.

But the law of Scotland as applied to licensed premises is that in towns and suburbs thereof no place is to be counted an inn or hotel unless it contains at least four apartments set apart for the sleeping accommodation of travellers. In rural districts and populous places of not more than one thousand inhabitants, a place may be an inn or hotel eligible for the inn licence if it has two rooms set apart for travellers.

I want you to notice that the three kinds of licences are subdivided. Any one of them can be either a full licence, empowering the holder to sell spirits—which includes the power to sell other liquors—or it may be a licence to sell wine, which includes the power to sell beer and porter and cider and perry; or, lastly, it may be a licence excluding wine and spirits and only empowering the holder to sell beer and porter and cider and perry. Thus a man may apply for a licence in respect of an inn or hotel. The justices may grant him permission to sell all kinds of excisable liquors—this is what is called a full licence; or they may grant him a licence only to sell wine, beer, ale, porter, cider, and perry; or they may grant him an inn licence, empowering him to sell the last-mentioned varieties of liquor, excluding wine.

An Inn Licence is a licence which allows the holder to sell, for consumption on the premises, the kinds of liquor specified in the licence. The licence-holder may sell such liquors to *bonâ fide* travellers and lodgers during prohibited hours and on Sundays.

A Public-house Licence is a licence granted for a place that is a mere drink-shop, and no sale is allowed during prohibited hours even to travellers or lodgers. Neither is any such sale allowed to anyone on Sundays. Otherwise, the public-house licence is in effect the same as the licence for an inn or hotel.

The Dealer's and Grocer's Licence is an off-licence pure and simple. After the first modern Licensing Acts, passed in the year 1828, a great deal of public mischief was caused by the granting of licences by justices to shop-keepers who kept provision shops. In many places the local grocery was also a public-house, where liquor was drunk in considerable quantities. For many reasons, it was deemed desirable to do away with this kind of thing. It was supposed to lead to something very like shebeening. Therefore, by a later statute it was enacted that no licence for the sale of liquor to be consumed on the premises should be granted to any person who sold any uncooked provisions on his premises. But by way of making it possible for people to procure liquor for home consumption without going to a public-house, it was provided that the justices might grant licences to provision dealers and grocers, provided these licences should not authorise the liquor to be consumed on the premises.

So severe is the law of Scotland in this regard, so strict is the law that a person holding a grocer's licence shall not allow any liquor to be consumed on the premises, that it is unlawful for such a person even to give away a glass of liquor to be drunk in his shop. If a grocer holding a grocer's liquor licence wishes to "treat" a customer or a friend, he must take him into

the private part of his house or to an hotel or public-house. He certainly cannot "stand" a glass in the grocer's shop, even when there is no money or other valuable consideration given for it.

The law as to the granting of occasional licences and early-closing licences is much the same in Scotland as in England. So also is the law, as far as it is applicable, to six-day licences.

Occasional Licences are licences allowing a person who already holds a licence for the sale of liquor either to extend the hours during which he may lawfully sell drink on his premises or else to sell liquor on some premises not licensed.

The occasional licences can only be granted in Scotland on the occasion of a public or special entertainment. The persons who grant such licences are, **in counties**, two Justices of the Peace, and **in burghs**, either the chief magistrate himself or the two senior acting magistrates of the burgh. When you apply for such a licence you must prove first that some public or special entertainment is to take place within the jurisdiction of the magistrates or justices to whom you apply. For instance, it is of no avail for a publican to apply for an occasional licence to the Lord Provost of Glasgow if the public or special entertainment is to take place at Gourrock. He must apply to the Gourrock Provost. Before the justices, or provost, or magistrates accede to the request, they must be satisfied that the place to be licensed contains the necessary accommodation for the entertainment. They must also be satisfied that the occasion is a public or special occasion. Further, they must be satisfied that the entertainment is to be of a legitimate and proper character. And last of all—which illustrates the foresight of the canny author of the statute—they must be convinced that the entertainment did not originate directly or indirectly with the licence holder. In other words, if they think that the licence holder has got up this entertainment, having in his eye the possible profit he will derive from it by the sale of liquor, they must refuse to grant the occasional licence.

In most parts of Scotland the justices and magistrates have not the same power of granting occasional licences possessed by the justices in England. For the Licensing Bench, at its meeting in the month of April, may make rules and regulations for the granting of occasional licences in its district. Thus the magistrates of Gourrock, at their meeting in April, may make rules of this kind:—

That no occasional licence shall be granted in Fair week.

That no occasional licence shall be granted to sell liquor in a booth or tent.

That no occasional licence shall be granted unless ten days' notice of the application is given to the clerk to the magistrates.

When such regulations have been made, the two justices or magistrates or provost cannot grant an occasional licence unless these regulations have been duly complied with.

Besides any notices which may be required to be given by the applicant

before he makes his application—he need not give any unless he is required to do so by some local regulation—he must give **notice to the police** after his occasional licence has been granted to him. This is accomplished by lodging the magistrate's grant with the local superintendent or chief officer of police of that district at least twenty-four hours before the time when the occasional licence is to come into force. One supposes that this is to enable the chief of police to direct his subordinates to keep an eye on the place so licensed. And it is also useful because the police on duty in that neighbourhood can be told that such-and-such an hotel has procured an extension of so many hours for a certain night—in which case the police will not be surprised to see the said hotel open after closing-time.

The Early-Closing Licence may be granted on the application of anybody who is applying at the licensing sessions for a new licence or the renewal of an old one. Such a licence is exactly like the early-closing licence issued in England, and is subject to precisely the same conditions (*see* p. 1410).

But the law as to closing public-houses at certain hours is different in Scotland from what it is in England, in this respect: The ordinary hours in Scotland are from eight to eleven all over the country. But the local Licensing Bench may fix an earlier closing hour in that district. Such earlier hours must not, however, be earlier than ten o'clock. In certain towns and cities the magistrates have no power to shorten the hours in this way. These towns are Edinburgh, Greenock, Leith, Aberdeen, Dundee, Paisley, and Glasgow, including the following suburban districts of Glasgow—Crosshill, Kinningpark, Pollokshields, Pollokshields East, Govan, Govan Hill, Hillhead, Maryhill, Partick. In the places named, all public-houses are entitled to keep open until eleven at night except those which have early-closing licences; and this law applies also to burghs with a population of over 50,000.

The licensing magistrates have a further power in Scotland as to the hours of opening and closing. In a particular locality of a district, **licensing magistrates may alter the hours** both of opening and of closing. They may authorise the public-house in that locality to open as early as 6 a.m., and to close at 9 p.m. Some misapprehension has existed in times past as to the exact powers of magistrates under this enactment. At least, it was decided that the licensing magistrates of any particular burgh or any particular licensing district or county might not make an order for the whole of their burgh, district, or county. They could not make an order altering the arrangements of opening and closing in some particular of their district; and they could not, under pretence of making an order affecting a particular part of their district, make such an order as would include all the licensed houses. For example, the magistrates of the burgh of Rothesay resolved that "Within the following limits, namely, Mackinlay Street, other hours are required for closing inns and hotels and public-houses." They therefore resolved that in that area all public-houses should close at some hour earlier than the legal limit. Now as it happened, although the

part mentioned was by no means the whole of the burgh of Rothesay, yet that area included every single inn, hotel, and public-house in the burgh. It was, in fact, just as effective as if the magistrate had said that all the public-houses, inns, and hotels should close at the early time. The case went up to the House of Lords on an appeal by some innkeepers against the decision of the licensing justices, and the House of Lords held that the magistrates had exceeded their power.

If the magistrates of a burgh or licensing justices of a county in Scotland wish to cause all their houses to be open at 7 and shut at 9, they cannot do it; but if, on consideration of the requirements of a particular part of the district, they come to the conclusion that it would be better for houses to open at 7 and close at 9, they may grant all the licences for that locality to open and close at those restricted hours.

Six-day licences only apply, in Scotland, to inns and hotels; because public-houses and other drink-shops are by law closed on Sundays. Inns and hotels are also closed on Sundays for the whole day, except that liquor may be sold to *bonâ-fide* travellers and persons lodging in the house. If an inn-keeper or hotel-keeper gets a six-day licence, the result is that he may not sell liquor on Sunday even to a *bonâ-fide* traveller, or to a person lodging in the house. Probably no one ever applies for a six-day licence in Scotland unless he is absolutely obliged to.

Although the Scottish licensing law is in many respects stricter and is certainly more symmetrical than the English law, it is looser in one respect. In England, a licence-holder, unless he procures an occasional licence for the purpose, may only sell liquor he is licensed to sell upon the premises in respect of which he holds his licence. But in Scotland, a man with a retail liquor licence is *entitled to sell his liquor not only on the licensed premises, but also in boats and vessels moored in rivers at any time*. He is also entitled to sell liquor in *booths, tents, etc.*, not being upon his licensed premises, *during the time a fair* is being held. But this is subject to the conditions that the place where he sells is within the limits of the fair; and that it is either in the parish where his licensed premises are or within the parish next adjoining thereto. Some such privilege used to exist in England, but it has long since been abolished there.

The law of Scotland imposes *heavy penalties for shebeening*. Shebeening means keeping a shebeen. A shebeen is a house, room, shop, premises, or place in which spirits, wine, porter, beer, ale, cider, or perry, or other excisable liquors, are trafficked in by retail without a magistrates' licence and an Excise licence. In fact, shebeening is a variety of the offence of selling liquor without a licence. Every keeper of a shebeen is liable to a penalty of £7 for the first offence, £15 for the second, and £30 for the third and any subsequent offence. If these fines are not paid, the defenders must go to prison for periods which vary according to the extent of the fine. In England, on conviction for selling liquor without a licence, the law only inflicts maximum fines, but the magistrate trying the case may make that fine less if he chooses. But the fines above mentioned imposed for shebeening

in Scotland must always be imposed in full. Not only the keeper of the shebeen, but any person found drunk or drinking in a shebeen may be taken into custody, haled before the magistrate, and fined 10s. with imprisonment if he does not pay.

People may be convicted of shebeening upon evidence which is to be taken as conclusive against them unless they prove the contrary. In the first place, if people are found drunk or drinking in a house, room, etc., and the police or other witnesses swear that the place is by repute a shebeen, the magistrates must convict. It will be for the owner or occupier to prove that the reputation of his house is undeserved.

Another way in which convictions for shebeening may be obtained is by the prosecution proving that they found somebody drunk or drinking on the premises, and that they also find there drinking utensils, or such other fittings as are usually found in a licensed house. Suppose, that is to say, the police raid a room that has not been licensed for the sale of liquor. There they find three or four men with glasses of whiskey before them. The room is fitted up with small tables with marble tops, such as are to be found in most hotels and public-houses, for the greater cleanliness thereof. They also find a number of measures marked half-pint, pint, and so on. The occupier or owner of that room is liable to be convicted of shebeening unless he can prove that in fact the place is not a shebeen; that is to say, that it is not a place in which he traffics in any intoxicating liquor. Shebeening is an offence which is to take place on premises. Another offence of selling liquor by retail without a licence is that of *hawking*. Hawking is the same sort of thing as shebeening, except that the liquor is sold in the open air and not upon any enclosed premises. Thus, if I stand at my door with a bottle of whiskey, and when I see people coming I step out into the street and offer to sell a dram for sixpence, that is hawking. If I invite them inside, that is shebeening. A person who hawks liquor without a licence is liable to a fine of £10, with sixty days' imprisonment in default.

The disqualifications of persons are not quite so strict in Scotland as in England. A person may be disqualified by being convicted three times of an offence against the Acts. He may also be disqualified for ever from holding a licence if he is convicted under the Prevention of Crimes Act for harbouring thieves or allowing stolen property to be deposited on his premises.

In many Scottish villages, the great place of assembly for worthies of the village is the **blacksmith's smithy**. Under the old state of things many blacksmiths were licensed to sell intoxicating liquor; and so bad was the practice found to be, that the blacksmith is now one of the few persons who are disqualified from being licensed for the sale of drink. He may have a licence in respect of premises not connected with his smithy and nowhere near it; but the law forbids him to be licensed to sell intoxicating liquor at his smithy, or in any house near or adjoining it.

As in England, so in Scotland provision is made for the granting of justices' licences in cases where the licence-holder dies or wishes to

remove from his premises. In the case of a deceased person, a continuation of his licence may be granted to his executors, trustees, or disponees. In the case of anybody wishing to give up keeping a house, transfer may be granted to some other person. But there is no need in Scotland to wait until any special licensing sessions. Temporary licences of the above character may be granted by two Justices of the Peace in counties outside burghs, and by two magistrates in burghs. These justices or magistrates must sit in open court.

REVENUE DUTIES.

The difference between the duties payable in respect of licences for the sale of spirits and other licences is that spirit licences are calculated on the basis of the annual value of the house licensed, while licences for the sale of other kinds of intoxicating liquors are fixed duties which do not vary according to the value of the premises. Let me remind you again that anybody who gets a licence for the sale of any kind of intoxicating liquor, which licence is either an early-closing licence or a Sunday-closing licence, is entitled to get off with a payment of only six-sevenths of the Revenue duty. Let me also remind you that a person who has a spirit licence—I mean an on-licence for the sale of spirits—need not take out a licence under the Excise to sell any other kind of liquor.

For instance, a beer on-licence costs £3 10s.; but if a man has a licence to sell spirits, he is entitled to sell beer without taking out a £3 10s. licence. The fixed duties payable for licences to sell **liquors other** than spirits are as follow :

LICENSED TO SELL.	AMOUNT OF DUTY.
	£ s. d
(1) Retailers of beer and wine, United Kingdom (on-licence)	4 0 0
(2) Retailers of beer and wine, United Kingdom (off-licence)	3 0 0
(3) Beer (on-licence) including cider, perry, porter, and ale, United Kingdom	3 10 0
(4) Beer (off-licence) including wine, perry, and porter, England	1 5 0
(5) Wine (on-licence), United Kingdom	3 10 0
(6) Beer - dealer's additional licence, England and Wales (off-licence)	1 5 0
(7) Cider, including perry, England	1 5 0
(8) Sweets, United Kingdom	1 5 0
(9) Wine (off-licence), England and Ireland	2 10 0

With regard to the sale of spirits, the holder of a licence must pay the duty, varying with the annual value of the house and the premises occupied therewith. If you turn to p. 1404 you will see what I mean by "annual value." Herewith I give a list of the duties.

ANNUAL VALUE OF HOUSE, <i>Including in the value of the house all offices, courts, yards, and gardens therewith occupied.</i>							DUTY		
							£	s.	d.
(1)	Under £10	...	...	...	...	...	4	10	0
(2)	£10 and under £15	...	...	...	...	...	6	0	0
(3)	£15 and under £20	...	...	...	...	...	8	0	0
(4)	£20 and under £25	...	...	...	...	...	11	0	0
(5)	£25 and under £30	...	...	...	...	...	14	0	0
(6)	£30 and under £40	...	...	...	...	...	17	0	0
(7)	£40 and under £50	...	...	...	...	...	20	0	0
(8)	£50 and under £100	...	...	...	...	...	25	0	0
(9)	£100 and under £200	...	...	...	...	...	30	0	0
(10)	£200 and under £300	...	...	...	...	...	35	0	0
(11)	£300 and under £400	...	...	...	...	...	40	0	0
(12)	£400 and under £500	...	...	...	...	...	45	0	0
(13)	£500 and under £600	...	...	...	...	...	50	0	0
(14)	£600 and under £700	...	...	...	...	...	55	0	0
(15)	£700 or over	...	...	...	...	...	60	0	0

There are certain people who are entitled to get off with a small duty—I mean people other than those who have early-closing and six-day licences.

The first is the **restaurant keeper**—that is, provided he only keeps open for six days in the week and closes early. The remission of duty is also subject to him having no open drinking-bar. That is to say, he must be a man who sells meals, and liquor to drink with the meals, though I daresay a person who had a café where liquor was served at little tables as it is on the Continent would be entitled to a remission of duty provided he had no bar. Such a person is entitled to a spirit licence for a sum not exceeding £30, no matter what may be the value of his premises. That is to say, if his premises are of the annual value of more than £200, he need only pay £30 duty. Of course, if he goes within a class of premises which would have to pay less duty than £30, under any circumstances he pays that similar duty. It is for the justices to decide whether the restaurant keeper is entitled to this abatement, and for them to give a certificate on his licence if they think so.

The next class is the class of an **hotel-keeper**. Such a person may have a full licence for the maximum sum of £20, no matter what may be the value of his premises, if he satisfies the conditions here mentioned. First the justices are to be satisfied that the place is structurally adapted to the reception of guests and travellers; that is, for use as an inn and hotel. Secondly, the justices must be satisfied that the premises are premises where no public-house business of the ordinary kind is carried on—that is, where there is no drinking-bar open to the public, and so on.

Lastly, you have theatres. A theatre does not require a justices' licence; but the Excise authorities must grant a full drink licence for a theatre on the payment of £20 as a maximum sum.

CHAPTER II.

NEW LICENCES—RENEWALS—OPPOSITION—TRANSFERS.

PROVISIONAL LICENCES—Premises about to be built—No provisional off-licences—Plans to be prepared—Notices served—Advantages of provisional licences—Discretion of justices as to renewal—How to apply—First licence—Then confirmation—Conditions—Built according to plans—Means "substantially" so built—The final order—No time limit—**NEW LICENCES** for existing premises—How to apply—Times of Licensing Sessions—Notices thereof—In church doors—Adjourned meetings—Notices to be given—To overseers—To superintendent of police—How to give notices—Contents of notices—A sufficient form—Notice to be advertised—And affixed to the door of the house—And of the parish church—For two Sundays—You cannot be heard if notices not given—How a bad notice may be cured—Calculation of time—How to count twenty-one days—The public right to object—Without notice—Three kinds of opposition—Publicans—Teetotallers—Property owners—**THE JUSTICES' DISCRETION**—Is absolute—Exceptions—Where licence can only be refused on four grounds: (1) Character of applicant—What is evidence of character; (2) Disorderly character of house; (3) Previous conviction or forfeiture; (4) House or applicant not duly qualified—Value—Meaning of "duly qualified"—No confirmation for off-licences—**OTHER NEW LICENCES MUST BE CONFIRMED**—By whom—Their powers—Opposition by whom—**RENEWAL OF LICENCES**—Must be had annually—Discretion—When limited to the four grounds—1869 wine and beer licences—Justices must give reasons for refusal—Sometimes give reasons in writing—Forfeitures—In most cases, justices have absolute discretion—How discretion to be exercised—"Wants of the neighbourhood"—**NOTICE OF OBJECTION**—Must state grounds of objection—Licence-holder not bound to attend—Unless summoned by justices—Justices starting objection—Evidence of objection on oath—Procedure when objection raised—Refusal to renew—No reason need be given—"Needs of the neighbourhood" objection—How to meet it—Question of supply and demand—**LAW OF SCOTLAND**—New licences—Similar to English—Application in special form—Questions to be answered—Accurate answers—Consequences of inaccuracy—Suitability of premises—Certificate—Good character—Certificate thereof—Time is important in applying—Public notice—Objections—Who may object—Confirmation—Opposition may call evidence—**RENEWAL**—How to apply for—Objections to—New kind of licence is a new licence—**APPEALS**—In Scotland—In England—To Quarter Sessions—**TRANSFER AND REMOVAL** of licences.

PROVISIONAL LICENCES.

HAVING ascertained that neither you nor your premises are disqualified to receive the particular kind of licence you desire to have, you may set about your application. Let us in the first place suppose that your premises are not yet built, but that you are desirous of building an inn or public-house. Of course, you may not be able to get a licence when you do apply. And if you should have built the premises first, and then your licence should be refused, you will have probably gone to a great deal of expense that will be quite useless should you be obliged to use the place as some other than a public-house or hotel. The Licensing Act of 1874 contains provisions to meet cases of this kind.

The statute provides for the **provisional grant of licences to new premises**. You may apply for one of these provisional grants either before the premises are constructed at all or when they are in course of construction. You have got to show that such premises about to be constructed, or in course of construction, are intended to be used as a house for the sale of intoxicating liquors to be consumed on the premises; for no provisional licences can be given for the sale of liquor to be consumed off the premises.

The first thing to do is to **cause plans to be prepared** by some competent architect. These plans ought to show practically every detail of the house. And then you should be specially careful to show that the house will be one easy to be supervised by the police, with commodious means of exit, and with proper accommodation for the class of house which you will represent you intend to carry on. Thus you will find it much easier to get a licence for an hotel where you intend to provide luncheon and meals for travellers and guests than for a mere public-house where you do not intend to provide meals. If you, therefore, by way of endeavouring to procure a licence for your premises, intend to have accommodation for meals, you ought to show by your plans that such accommodation will be ample.

Having got your plans drawn, you then **serve notices**. Notices are the same as those to be given in respect of a new licence for existing premises, which will be dealt with in a later sub-section. You must give those notices to the proper persons in time for the annual general licensing meeting of the district where the premises are situated. Then you go before the justices in licensing session, and apply in the manner hereinafter specified as the manner of applying for a new licence (*see* p. 1431). The justices must be satisfied by you that the plans submitted to them are such that if the premises had been actually constructed in accordance with those plans they would be granted a licence in respect of the premises.

The provisional grant, when made, is a very valuable asset. It can only be made subject to two conditions, namely, that the house shall, when completed, be in accordance with the plans which the justices have sanctioned, and that a fit person is the holder. If both these conditions are complied with, **the provisional grant is as good as an absolute grant** of a licence, as soon as it has been confirmed; for as soon as the house has been completed and is ready for use, the would-be licence-holder goes to the justices again at one of the special sessions (*see* TRANSFER), and there he produces evidence to show that he has completed the house according to the plans that have been approved, and that no objection can be made to his character. When he does this the licensing justices must grant him a licence in place of his provisional licence; and such licence is like any other licence. Of course, the person who gets a provisional grant, and afterwards a confirmation, is in no better position than any other licensed holder when it comes to a question of renewal of his licence. The justices may renew or not, at their discretion.

The procedure on application for a provisional grant is as follows:—

First, you give the same notice as in the case of a grant not provisional (see p. 1431), with one exception—in cases of grants not provisional the notice is required to be put upon the door of the house proposed to be licensed. As it is obvious that when a provisional grant is applied for the premises may not have even been started to be erected, this is dispensed with in the case of provisional grants, and the notice may be put up in a conspicuous position on any part of the premises. That is to say, you may get a board such as is used by people wanting to let houses, and may put your notice upon the board, taking care that this board is on some part of the premises in respect of which you intend to apply.

The *second* thing is to make your application to the licensing justices of your district. Every new licence must be confirmed (see p. 1438). In counties the confirming authority is a standing committee of the county justices, called the County Licensing Committee. In boroughs it is a special tribunal composed either of borough districts or of a General Committee of a borough and county justices. When the licensing justices of your district have given you the provisional grant,

The *third* step is to apply at the next meeting of the confirming authority for a **confirmation thereof**. Until your provisional grant has been confirmed by this authority it is not worth anything.

Fourth, if you have obtained a provisional grant and confirmation, you proceed with your house until it is ready to be used; and then,

Lastly, you apply to the justices for a final order. But before the justices may grant a final order they must direct you to give any notice which may be required to be given. These notices may be fixed either at a general licensing meeting or at a special licensing session. As a rule; when you get your provisional grant the licensing justices' clerk tells you what notices you are required to give before you apply to have the order made final.

I have previously said that the justices are bound to make a final order if you build in accordance with the plans that have been proved and there is no objection to the character of yourself or any other person who is proposed to be the licensed holder. When I say **build according to the plans**, I mean build **substantially** according to the plans. Thus in one case, after a provisional licence and confirmation had been made, it was discovered by the owner of the site that the plans had been drawn wrong. They had been drawn as if the site were perfectly flat and level, whereas in fact it sloped considerably. I suppose this was the architect's fault. He had apparently drawn the plans without looking at the site on which they were to be carried into effect. Well, the building owner did what he could—he built his house as nearly to the plans approved as it was possible to do on the sloping site. The justices, on application, objected—or somebody else objected and the justices upheld the objection—that as the plans had not been strictly adhered to, line for line, there was no power to make a final order. But the High Court held not only had the justices power to make a final order, but that they were bound in law to make a final order, if the building as erected was in substantial accordance with the plans that had been proved.

As every architect, and almost everyone else, knows, it is always possible that after you have drawn your plans and begun to build, something may be discovered as to the site which would render it inadvisable to stick to the plans with absolute literalness. And as the law generally regards the substance of a thing rather than the mere form, you will be in a perfectly sound position if you build substantially in accordance with the plans, though you make some slight alteration to cope with some difficulty that has arisen unexpectedly.

There seems to be **no limit to time** within which you are bound to apply for your final order. It has been said that you ought to apply within a reasonable time; because if you do not, you may be prejudicing the interests of third parties. That is to say, if you do not apply you may be keeping back Jones or Brown, who, if you applied and were refused, would themselves apply for a licence for premises in the same neighbourhood. This has been said by a very high authority indeed; but as far as I know it has never been said by a judge. I cannot, therefore, say with certainty that it is the law; but I think very likely it is correct. Therefore, if you have a provisional grant, I advise you to set about the building of your place with all reasonable speed, and to apply for a final order as soon as possible after the house has been finished.

NEW LICENCES

It may happen that you wish to apply for a licence which is a new licence because the premises have not been licensed before. Thus if you have had an off-licence and apply for an on-licence, that is an application for a new licence. Again, if you have had a beer-house licence, and you apply for a licence to sell spirits, that is an application for a new licence. In fact, every application for a licence is for a new licence where the premises in respect of which you apply were not previously licensed in a similar way. Let me now try to give you the procedure, and show you **how to apply for a new licence.**

The Act of George IV., which is the basis of modern licensing law, enacted that there should be holden all over the country once every year a meeting of certain justices called the General Annual Licensing Meeting. In the counties of *Middlesex and Surrey* these meetings were to be held in the first ten days of the month of March, and in *every other county* on some day between the 20th of August and the 14th of September inclusive. These meetings of justices are held to this day, and are held for the simple purpose of granting licences, whether new licences or renewals. You can always be sure of the date on which these are going to be held by applying to the clerk of the justices of your district or borough. For twenty-one days at least before the annual licensing meeting, the Petty Sessions appoint a day, hour, and place of the licensing meeting.

Within five days of the justices having made such appointment, the clerk to the justices or other person having proper authority must cause

the constables within his jurisdiction to affix on the doors of the churches and chapels a notice of the day, hour, and place at which the meeting is appointed to be held. Persons about to apply for new licences, unless they make arrangements with the clerk of the justices to give them notice, must rely on what they see on the church or chapel doors. The word "chapel" here does not mean Nonconformist meeting-house; it means a chapel of the Church of England. You will look out, of course, for these notices to appear from and after the 4th of August every year, or the 12th of February if you are in Middlesex or Surrey. You need not depend upon the notices on the church doors in every case. If you are a person keeping an inn, or if you have given notice to the clerk to the justices of your intention to keep an inn and to apply for a licence to sell excisable liquors by retail to be consumed on the premises, or have given notice that you intend to apply for a billiard licence, then the clerk to the justices is bound to cause a notice of the said hour and place of the licensing meeting to be served upon you.

You see that it is only obligatory on the clerk to the justices to serve these notices on people who keep, or who intend to keep, an inn. But it is usual, when a man sends notice to the clerk that he intends to apply for an on-licence for any kind of public-house, whether an inn or not, for the clerk to send him notice of the meeting of the licensing justices. It should be said that if the proper notices of the time and place and meeting are not given by the justices in the way previously mentioned, those justices have no power at all to grant any licence. People who intend to object to the granting or renewal of any licence will do well to keep their eye upon the church doors from the 4th of August and onwards, or from the 12th of February and onwards in Middlesex and Surrey.

When the licensing justices meet they must appoint **at least one adjourned meeting**. They may appoint, if they like, more than one. But such adjourned meeting or meetings must be held during the month of August or September (month of March if in Surrey or Middlesex). The first adjourned meeting must not be within five days of the annual meeting. Thus the adjourned meeting does not mean what an adjourned meeting generally means, namely, a mere continuation of the first meeting because the business was not finished. Suppose the justices at the Annual General Licensing Meeting held, let us say, on the 30th of August, did not finish their work on the 30th, they may adjourn to the next day, or the day after, or any other day they like, provided it is not beyond the 14th of September (10th of March in Middlesex and Surrey), and therefore finish the business. You will presently see what is the object of making justices fix a second or adjourned meeting.

Before you can apply for a new licence—and this also applies to provisional grants (*see* p. 1429)—you must be very **careful to give certain notices**. You must be particularly careful to give these notices. If you do not give them correctly you will find that you cannot be heard to apply for a new licence. In the first place you must give notice to the

overseers of the parish, township, 'or place in which the house or shop proposed to be licensed is situated. It is, probably, not enough to give such notice to an assistant overseer. I know that notices are very often given to the assistant overseer ; but if I were applying for a licence I should not risk it.

Secondly, you must give notice to the **superintendent of police** of the district. It is not enough in this case simply to leave the notice at a police station. You must deliver it to the house or office of the superintendent master. The safest plan is to send both the superintendent's notice and the overseers' notice by registered letter. Be careful to keep for protection before the justices a receipt given you by the postmaster for your letter. The notices to the overseers and the superintendent of police should be identical.

Contents of notices. You should first of all state your name and address ; next the description of the licence or licences for which you intend to apply, and, last, the description of the situation of the house or shop in respect of which the application is to be made (*see* form facing this page).

You must also advertise this notice in some newspaper circulating in the place in which the house or shop is situated, not more than four weeks and not less than two weeks before the proposed application, and on such a day or such days, if any, as may from time to time be fixed by the licensing justices. This means that the justices may make a rule that the advertisement shall be inserted so as to appear in the paper on a particular day in the week, or on more than one day of the week. It is well to inquire of the clerk to the justices what the local rule is in this respect. Clerks to the justices are usually, in my experience, very courteous gentlemen ; and no doubt the clerk in your district will be very glad to tell you what the rules are. If he says there are no rules on the subject, then you can select any day, and you need only advertise the notice once. The advertisement should be of the same sort of form as the letter printed above, though, of course, it should not be addressed to anyone in particular.

If you are applying for a licence for a house or shop not before licensed for the sale by retail of beer, cider, or wine, you must, within twenty-eight days before the application is made, cause a notice like the notice authorised to be affixed and maintained **on the door of the house or shop** and on the principal door (or on one of the doors if there is more than one particular door) *of the church* of the place where the house or shop is. If there is no church or chapel, then on some other conspicuous place. The notice must be affixed on these doors between the hours of 10 a.m. and 5 p.m. on two consecutive Sundays. Be particular to notice that these two Sundays must be two Sundays within the twenty-eight days before the application is made.

Now, as I have said, you are **not entitled to be heard** at all in your application unless you have given the proper notice both as to time and as to place. But as a rule you will be allowed a little grace if you have merely made a slip. Thus, suppose that your notice to the superintendent of police

FORM OF APPLICATION FOR ALEHOUSE LICENSE (ON AND OFF).

To

The Superintendent of Police of the
Petty Sessions District of Odeothwaite

and

To the Overseers of the Parish of Camule-cum-Anser

Take Notice that I, Edward John Jackson, of 7 Ardley Villas, Camule-cum-Anser, intend to apply at the Annual General Licensing Session for the District of Odeothwaite to be holden on the 24th day of August 1902, for an Alehouse license (on and off) in respect of the premises now known as Numbers 12 and 14 Camden Row, Camule-cum-Anser aforesaid.

Dated the 30th day of July 1902.

(Signed) Edw^d Jno. Jackson

SAME FOR BEER OFF-LICENSE.

(Address as above)

Take Notice that I Edward John Jackson of 12 Camden Row, Camule-cum-Anser, Grocer, intend to apply at the Annual General Licensing Session for the District of Odeothwaite, to be holden on the 24th day of August 1902, for a Beer Off-License in respect of my Shop N^o 12 Camden Row aforesaid

Dated the 30th day of July 1902

(Signed) Edw^d Jno Jackson



was despatched two days late, so that he had nineteen instead of twenty-one days' notice before the day fixed for the Annual Licensing Session. You have already been told that the justices are bound to fix an adjourned meeting, which must be at least five days after the original meeting. You should ask them to postpone the consideration of your application until the adjourned meeting, and if they do so you will be put right as regards your notices. Suppose, as generally happens, the justices adjourn the meeting to some future day a considerable time ahead, you may, if you like, give a fresh notice; and if that notice is given in time, and in the proper way, and to the proper person, so as to be given, for instance, to the overseer and superintendent of police at least twenty-one days before the adjourned meeting, you may make your application at the adjourned meeting.

The calculation of time in a legal sense is not often the easiest of performances. It will, perhaps, be useful to my readers to know that the twenty-one days' notice to the overseer and superintendent means twenty-one clear days. That is, the day on which the notice is served and the day of the Licensing Sessions are both excluded. To give an example, if the Licensing Sessions are held on the 24th, and you intend to make an application for a new licence then, you must serve your notices on the overseer and superintendent of police not later than the 2nd of the month—which means that the notices must arrive at the houses or offices of these persons on the 2nd.

The reason why these notices have to be given is that **people have the right to object to your licence** being granted; and, of course, those who might wish to object can well demand time to prepare their case against you. It is different in the case of renewal of an old licence. But in the case of an application for a new licence no notice is necessary to the person applying. Any member of the public may appear before the licensing justices and oppose the grant of the new licence. He may oppose it on any ground that he thinks fit. And he may, apparently, appear by counsel for as well as to oppose it. As a rule, opposition is made by persons of three classes. In the first place, the other publicans in the neighbourhood will oppose. In the same category with them must be ranked rival applicants who are themselves applying for new licences in the same district. The task of the existing publicans is that of showing—at least, this is the general line of their opposition—that there are already in this neighbourhood enough public-houses to supply the needs of the inhabitants. In order to meet opposition of this kind (it may be sprung on you without any notice whatever), you ought always to be prepared with plans of the district and measurements and certain statistics as to the population and so on.

You ought to be able to prove some such case as this: I am applying for a licence for a house situated at the corner of High Street. The nearest public-house to the site of the proposed licensed premises are, the George and Dragon, a quarter of a mile away; the Horse and Waggon, situated in the opposite direction, 650 yards away; the Britannia Arms, situated in another direction, 350 yards away, and the Swan with Two Necks, situated 150 yards away. Of course, the proximity to the Swan with Two Necks

may be against you; but you may be able to show that the landlord of this house carries on the trade of quite a different character from the kind you propose to lay yourself out for. You may say that the Swan with Two Necks is a beer-house, with no spirit licence, whereas you are applying for a full licence. You may be able to show that the Swan with Two Necks has no accommodation for lodgers or guests, while you propose to have such accommodation. Further, that none of the houses near to you cater very much as restaurants, whereas you propose to supply luncheons regularly, and other meals as they may be required.

It will also be useful for you if you are able to satisfy the licensing justices that there is **some particular class for whom you cater** who are not sufficiently catered for in the town or in any part of the town. You may be able to prove to the satisfaction of the Bench that there is very little accommodation for some class of people who really require it—as, for instance, commercial travellers. And if you can get half a dozen commercial travellers to come down and say that their wants and the wants of their class are insufficiently catered for in your town; and that as far as they can judge your new hotel would supply their wants, you may stand some chance of procuring a new licence.

I do not hold out to you, in the present state of public feeling, any very flattering hopes of obtaining a new licence in any part of the country; except, perhaps, in some place which is rapidly growing—as, for instance, a seaside resort that is becoming fashionable. You stand a fairly good chance of obtaining a licence for a restaurant where you do not intend to have a bar or any accommodation for drinking except with meals. But I do not know of any part of the country where a new licence for the sale of intoxicating liquors to be consumed on the premises is granted at all readily.

You are, of course, **entitled to be heard**; you are entitled to be heard fully. Justices are not entitled to pass a resolution saying that they will grant no new licences. If they do, they are guilty of a breach of the law; and if justices on taking their seats at the Licensing Session say that they have come to a resolution not to grant any new licences, their decisions may be appealed against, unless they hear and consider every application on its merits. For a Special Licensing Session is a tribunal that must act judicially; and no judicial tribunal is allowed by law to decide beforehand what it will do.

As men of the world we know perfectly well that licensing justices very often do make up their minds not to grant any new licences; but they must not announce that determination—still less must they, before having heard all the evidence tendered, say that they have notices before them of applications for two new licences and that they beg to tell the applicants that neither of these licences will be granted. The judge might just as well come on the bench some fine morning and say, “I know there is going to be before me to-day an action for breach of promise of marriage. I beg to tell the plaintiff that I shall not allow her to have judgment in her favour.” This conduct would be unjudicial as well as injudicious.

The class of objections which may be called the **teetotal objections**,

of which I wish to speak with every respect, are not, as a rule, the most deadly. It is not enough for an objector who is a temperance man to object to a new licence being granted for the Golden Lion merely because he objects to any licence whatsoever to any premises whatsoever. His objection generally amounts to this: That there is a sufficient supply of licensed premises to meet the requirements of the neighbourhood. This is perfectly valid if he can sustain it to the perfect satisfaction of the justices. The usual cross-examination administered to a temperance objector is, "Are you a teetotaler? Do you object to the sale of intoxicating liquors altogether?" and so on and so on. Of course, the honest man generally admits that he is a teetotaler and that he does object to the sale of intoxicating drink, root and branch. He can generally be brought to admit that he would not only refuse new licences, but would shut up all the existing houses. And, as a rule, if he can be made to admit the possession of some very extreme opinions, he considerably discredits his cause and his objection in the eyes of the Licensing Bench.

Personally I confess that I have never been able to see the logical force of this kind of cross-examination. I can admit that it is effective as regards results; but I am inclined to ascribe it rather to the prejudice of the Licensing Bench than to the strength of the argument hinted at by this kind of cross-examination. Why in the world should a man's objection to the granting of a licence in respect of the Golden Lion carry any the less weight because he happens to object to public-houses in general? It is perfectly logical for me to say, "I object to public-houses in general; but quite apart from that, I say that there are enough licensed houses in this town to satisfy all the needs of the neighbourhood."

As far as my own experience goes, the deadliest kind of opposition is the opposition which comes not from teetotalers but from **property owners in the neighbourhood**. Most licensing justices are men of substance, with house-property of their own. And when it is represented to them (as it can be most forcibly) that if a public-house is allowed to be established in a respectable street the value of all the other houses in the street will immediately decrease, they begin to look at the applicant for the licence as a person who is trying to rob his neighbours of part of the value of their property. And from the point of view of the applicant for the licence the worst of this objection is that the facts are invariably true. For it is a fact, as many of us know to our cost, that if you establish a public-house in a residential street of decent class, the value of the houses in that street depreciates very considerably. So much is this so, that it is quite usual, when a man is laying out a building estate for houses of the villa type, for him to make every purchaser or lessee stipulate that he shall not at any time apply for any licence to sell intoxicating liquors thereon.

In a celebrated case which did not actually turn upon the ground of a new licence, but rather upon the application to renew an old licence, it was decided by the House of Lords that **the justices have an absolute discretion** as to whether they will grant any licence or not.

But this rule is subject to certain *exceptions*. It obtains with regard to all licences for the sale of liquor for consumption on the premises ; but there are CERTAIN OFF-LICENCES with regard to which the justices have not absolute discretion. An applicant for a licence or certificate to sell wine, cider, sweets, liqueurs, or spirits by retail, not to be consumed on the premises, can only be refused on one of four grounds. These I will endeavour to set out in some detail. They are :—

1. That the applicant has **failed to produce satisfactory evidence of good character**. This means that before any applicant can get one of these licences he must produce affirmative evidence of his good character to the licensing justices. If the licensing justices grant him a licence without him having produced any such evidence, then they are wrong in point of law. But “evidence” here does not mean evidence on oath. The usual evidence required is something in the nature of a certificate of character signed by certain reputable inhabitants or people of position. There is no absolute, definite rule as to what this evidence must consist of. It is not, remember, incumbent upon the objector to produce evidence that the applicant is not of good character. Of course, if they can do this the applicant is doomed. But they need not be put to the trouble of doing it. It is for the applicant for the licence to produce evidence that he *is* of good character.

Thus, if you make an application for a retail wine licence for consumption off the premises, you must be very careful when you go into the witness-box to say something about your own character, or else to produce some witness or some document to show that you are of good character. If you merely go into the witness-box and say, “I apply for a wine off-licence in respect of such-and-such a shop,” and the justices grant you that licence, their decision will probably be upset. If you say, “My name is Jones, and I have lived in the parish where my shop is for fifteen years, and I have always kept the place decent, and nobody has ever said a word against my character,” that is sufficient, or may be considered sufficient by the licensing justices. What I want to point out to you is that by the law you *must* give some evidence of character. If you do not, the justices cannot legally grant you a licence. On the other hand, they are not bound to consider your evidence of character satisfactory even if you do produce it ; but if they decide against your application on the ground that you have not produced satisfactory evidence of character, you are quite at liberty to appeal to Quarter Sessions against their decision, and you may call at the Quarter Sessions any evidence of character that you can obtain.

2. That the **house or shop** in respect of which the licence is sought, or any adjacent house or shop so kept by the person applying for a licence, is **of a disorderly character**, or is frequented by thieves or persons of a bad character. I want to impress upon you that this objection is an objection to the premises. Suppose that you apply for a retail off-licence for spirits in respect of a shop on Carlton Hill. A policeman goes into the box and

says he knows the shop well, and he knows that it has been frequented by persons of bad character, and is of a disorderly nature. You cross-examine the policeman, and he admits that he has not known of any disorder since you went into the house two months ago. Nevertheless, the justices may, if they like, find that the house is of a disorderly character. You see, the statute does not refer to the applicant in this section; it refers to the premises. The reason seems to be that if premises get a bad reputation it is very difficult for them to live that reputation down, and to become anything else but a resort of disorderly persons.

3. The third objection is one **strictly personal to the applicant**. If it is proved that the applicant previously held a licence for the sale of wines, spirits, beer, or cider, and forfeited the same for his misconduct, he is not entitled to have a wine retail licence or any of the other off-licences described above. And the objection applies also if he has, through misconduct, been at any time previously adjudged disqualified from receiving any such licence or from selling any of the said articles.

4. The last of the four objections to applications for the off-licences aforesaid is applicable either to the house or to the person. It is that the applicant or the house in respect of which he applies is **not duly qualified as the law requires**. The qualification referred to means, as a rule, as to the premises, that the house is not of the proper value according to the law, which requires, as I have said (*see* p. 1403), most licensed houses to be of a certain annual value. The magistrates are not allowed to make objections themselves against the premises, other than that the premises do not come up to the proper value. Thus, where a licensing bench refuses an off-wine or an off-spirit licence, because the premises had a baker's shop attached to them and forming part of them, it was held that the justices were wrong. The statute says, "qualified as by law is required." And although we know that the justices represent the majesty of the law on occasion, and represent it with a great deal of dignity, yet we also know that "as by law is required" does not mean "as by the licensing justices is required."

With the personal disqualification I have dealt previously. And I would here add that it is not within the discretion of the justices, when they are dealing with these off-licences of the kind I have mentioned, to create a number of qualifications or disqualifications of their own kind. It is quite right for them to refuse to grant licences to people disqualified by law. But they cannot say, for instance, "We will not grant this licence because the person who applies for it is a butcher."

I want you clearly to understand that the discretion of the justices in respect of the grant of new licences is only limited to the four matters stated above, when the licences applied for are licences to sell by retail cider, spirits, wine, sweets, and liqueurs to be consumed off the premises.

I would also add, to prevent confusion, that the above off-licences **do not require any confirmation** by the confirming authority. So that since you have obtained your licence from the licensing justices, you may go to the Excise authorities and take out the Excise licence, which you have got the justices'

licence to take out. For, as you remember, a justices' licence is merely a licence to take out a licence. It is the Excise licence that really gives you the right to carry on a trade in excisable liquors. There is also this difference between a new off-licence and a new on-licence: that an applicant for a new off-licence who is refused by the licensing justices has a right to appeal. I will deal with these appeals at a later stage.

A new licence for the sale of liquor to be consumed on the premises is **not valid unless it is confirmed**. In other words, having passed the Scylla of the licensing justices, you have still to navigate your bark past the Charybdis of the licensing committee which forms the confirming authority.

In counties there is a standing committee of the county justices, called the "County Licensing Committee," which is appointed by the justices in Quarter Sessions, annually. There may be more than one such committee for a county, and if there is more than one the justices in Quarter Sessions must assign to it some area in which to exercise jurisdiction. It cannot be less than three or more than twelve in number, and three members form the quorum for the transaction of business.

In boroughs there is also a licensing committee, which is appointed from amongst the borough justices at a meeting of those justices held within a fortnight before the period when the licensing meeting must be held—that is, some time between the 6th of August and the 20th of August in the greater part of England and Wales, and some time between the 14th of February and the 1st of March in Middlesex and Surrey.

If you succeed in procuring a licence from the licensing justices you go before the confirming authority as a matter of course; and you have to stand the same chances exactly as you did before the licensing justices. I mean that the confirming authority does not by any means grant your application for confirmation as a matter of course, but it hears your application all over again. **The confirming authority has exactly the same powers** as the licensing justices to grant or withhold their confirmation. If they decide against an applicant he has no appeal against their decision. They need not give any reasons whatever for their decisions, and have, in fact, a most absolute discretion. On the other hand, should they grant the confirmation, it is still in the power of anybody who appeared before them, to object, to carry the case to Quarter Sessions and appeal against the grant. I ought to say that the only people who have a right to appear before the confirming authority to oppose a confirmation are those who went before the licensing justices to oppose the original grant. No new objector may appear.

On the other hand, although the magistrates have the power of determining whether a licence should or should not be granted, without appeal so far as the applicant is concerned, yet if they give **a wrong decision on a point of law** he has the right to appeal. Let me give you an example. A certain woman named Watts intended to apply for a wine and beer licence. This was in London, within the County of Middlesex. The licensing justices had fixed the annual meeting for the 6th of March, and public notice of the meeting was given on the 13th of February. Appended to the

notice of the meeting was a note stating that applications for new licences would not be taken before the 20th of March. On the 13th of February Mrs. Watts served the proper notice of her intention to apply for a licence (*see* p. 1438). As you know, she ought to have served her notice twenty-one clear days before her application should be heard. Now from the 13th of February to the 6th of March is not twenty-one clear days. On the 6th of March the justices adjourned the Court until the 20th, and at this meeting Mrs. Watts's application was heard and after due consideration was granted.

The grant had to be confirmed by the justices of the County of London, before whom the new licence came in the usual way. When the application for confirmation came up somebody raised an objection that the notice was not in time. In other words, they objected that Mrs. Watts ought to have given notice of her intention to apply for a new licence twenty-one clear days before the first day of the annual licensing meeting. She contended that as there were more than twenty-one clear days between the date when she gave notice and the actual date on which her application was heard, it was enough to comply with the law. The county licensing justices of London held, however, that her notice was bad; and on that ground they refused to grant the licence. Mrs. Watts appealed, and succeeded in her appeal, on the ground that the county justices had gone wrong in law. If the county justices in a judicial manner had heard her application upon its merits, and had then refused without giving any reasons at all, she could not have appealed.

When you apply for a licence other than a wine or beer licence you pay certain fees to the clerk to the justices, but you only pay when the licence is granted. These fees amount, in all, to 7s. 6d.

THE RENEWAL OF LICENCES

Every licence of justices as well as every Excise licence granted, either in pursuance of a justices' order or without a justices' order, runs from the 10th of October in one year to the 10th of October in the next. Of course, if the licence is granted otherwise than at the beginning of a licensing year, it only runs to the 10th of October next, on which day it must lapse unless it is renewed. In the counties of Middlesex and Surrey it runs from the 5th of April to the 5th of April. It follows that **every licence must be renewed annually.**

The renewal of a licence is by no means such a formidable business as the granting of a new licence. To begin with, it does not need any confirmation by a confirming authority. In the second place, although the licensing justices have an absolute discretion to refuse to renew any licences, and that, as a rule, without giving any reasons, yet the legislature seems to recognise that the man who has had a licence granted to him has a vested interest in that licence. Perhaps I ought rather to say that the legislature seems to recognise that premises which have been licensed have a vested

interest when the licence has once been granted. Let me deal first with the exception and then with the rule.

There is one class of licences which the licensing justices can **only refuse to renew on certain specified grounds**. These are commonly called the 1869 Wine and Beer Licences. These licences are licences which have been continuously in existence since the year 1869, and are for the sale of beer and foreign wine ("beer" for this purpose includes cider and perry) to be consumed on the premises. When I say that the premises must have been continuously licensed, all that I mean is that there must have been a licence for the sale of cider or wine to be consumed on the premises in existence in respect of the same premises on the 1st of May, 1869. It does not matter in the least whether the licence has always been held by the same person or not. It may have changed hands a hundred times without making any difference. The point is that the licence has been held in respect of the premises. These licences are the bugbear of a certain number of Licensing Benches. The possessor of such a licence, you see, is in a somewhat independent position. He knows that the renewal of his licence cannot be refused, except for certain reasons which I have given on pp. 1436-7 in respect of applications for certain off-licences. It may be well, perhaps, to repeat them shortly. They are:—

1. That the applicant has failed to produce satisfactory evidence of good character (*see* p. 1436).
2. That the house or shop in respect of which the licence is sought, or any adjacent house or shop owned or occupied by the licensed holder, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character (*see* p. 1436).
3. That the applicant has already had one licence for the sale of wine, spirits, beer, or cider forfeited for misconduct; or that he has, through misconduct, been at some time adjudged disqualified from receiving a licence (*see* p. 1437).
4. That the applicant of the house is not duly qualified as is by law required (*see* p. 1437).

I have explained what is meant by each of these four grounds of objection. I ought, perhaps, to say that when the justices refuse an applicant for the renewal of an 1869 beer or wine licence, they ought to give reasons for their refusal. They are not bound to give these reasons in detail, but they must specify upon which of the four grounds they refused to renew the licence. And they must do this even though the applicant or his lawyer does not ask them to do it.

If they refuse on the ground that the house is not qualified as the law requires they must do even more than this. They must give their reasons in writing, and state why they say the house is not qualified as the law requires. They need not give a formal document of any kind. I know some Licensing Benches that do this: they cause the clerk, who is a lawyer advising them on the law, to draw up a little written memorandum embodying the decision of the justices. This memorandum is taken by the chairman and

read out by him. That is a sufficient statement of reasons in writing to satisfy the requirements of the law in this matter. I know that some justices cause a memorandum to be written by the clerk giving reasons for the judgment, and then the chairman of the Bench signs the memorandum and hands it to the man whose application has been refused. No doubt the latter is the more formal course; but the other is enough for all practical purposes, and no appeal will lie against the justices because they have not actually delivered a written judgment to the applicant.

There was a very curious case once which showed the strict limitations which the Court place upon the grounds of refusal to renew a beer-house licence. A man applied for a licence and produced evidence of good character. But the police turned up at Quarter Sessions, and somebody brought evidence to show that the applicant for the licence had, a long time before, been convicted of some offence. The Quarter Sessions thereupon declined to grant the licence, and they based their refusal upon the first of the four grounds, namely, that the applicant had failed to produce satisfactory evidence of his good character. That decision was upset by a higher Court. The higher Court said that Quarter Sessions had decided the case upon the grounds that the applicant was not a fit and proper person to have a beer-house licence because he was a person who had once been convicted of an offence. This, they said, was not ground No 1. The fact that a man had once been convicted of an offence was no proof that at a subsequent date he was not a person of good character. In effect, the Quarter Sessions decision was that a person who had once been convicted of an offence could not at any future time be granted a beer-house licence. And as this is not what the Wine and Beer-house Act says, the ground taken up by the Quarter Sessions was bad.

If you are a person with a wine or beer on-licence which has been in existence since the 1st of May, 1869, you should be particularly careful not to let it drop. But seeing that the licence exists for the benefit of the house, that is for the benefit of the owner of the property, certain ways and means have been provided by Parliament to secure the property owner from the depreciation of his property by some conduct on the part of the licensed holder which the owner of the place could not help or control.

There are certain offences which, even if committed for the first time by a licensed holder, may involve the forfeiture of the licence. These are:—

1. Making an internal communication between his licensed premises and any unlicensed premises.
2. Forging a certificate (justices' licence) under the Wine and Beer-house Acts, 1869 and 1870.
3. Selling spirits without a spirit licence.
4. Committing a felony.

Now if the licence-holder is convicted of any of these four classes of offence, and in consequence he becomes disqualified or has his licence forfeited, the owner of the premises may make an application to the nearest court of summary jurisdiction for authority to carry on the business on the

premises until the next Special Licensing Sessions. (*See* end of chapter for Special Licensing Sessions.) At the next Special Licensing Sessions the owner of the property, or someone on his behalf, may apply for the grant of a licence in respect of the premises. When such an application is made with regard to the house possessing one of these old licences, the justices can only refuse the application on one or more of the grounds aforesaid. They have not an absolute discretion to grant or refuse.

But **where the licence is forfeited** on any other occasion, except upon a first conviction for one of the four classes of offences above set out, or where the licence lapses because the justices upon some proper legal ground refuse to renew the licence, or merely because the tenant omits to apply for the renewal, or because the licence has come to an end before an application for a grant at Special Sessions is made—the licence is irretrievably gone. And if any person desires to procure a licence for the old premises again, he must apply for a new licence, and that new licence will not be an 1869 wine or beer licence. It will be merely an ordinary licence which the justices have the right to renew or refuse at their discretion.

Now I have previously said that with the exception of the above-mentioned cases, namely, the beer and wine licence of 1869, **the licensing justices have an absolute discretion** to renew or refuse to renew the licence. It was at one time thought by my late learned friend, Mr. George Candy, that once a licence had been granted by justices they were bound to renew it if asked, unless they had proved to them some reason personal to the applicant—for example, that the applicant was in the habit of getting drunk on his own premises. This contention was absolutely swept away in the celebrated case of *Sharp v. Wakefield*. That was a case of such importance that I feel justified in alluding to it here at some length.

Mrs. Susannah Sharp was the owner of an inn in the county of Westmoreland. The inn was called the Lowbridge Inn, and it was situated in rather a lonely part. The tenant of the house was a man named Ridding, upon whom notice had been served that the renewal of his licence would be opposed because the house was too remote from police supervision and was not required in the locality and neighbourhood. The local Bench held these grounds proved, and refused the renewal. Mrs. Sharp appealed, and took the case right up to the House of Lords. It was there argued at great length and with enormous ability by the present Master of the Rolls (Sir Richard Henn Collins) on the one side, and a gentleman who is now his Honour Judge Addison on the other. Mrs. Sharp's counsel were compelled to admit that in the case of a grant of a licence in the first instance, it is within the power of the magistrates, and it is even part of their duty, to consider the wants of the neighbourhood, both with regard to its population and the means of inspection by the police. Lord Halsbury, the Lord Chancellor, said: "If this is the original jurisdiction, what sense or reason can there be in making these topics irrelevant in any future grant? It surely must have been in the contemplation of the legislature that the needs of a neighbourhood

might change, a population might diminish or increase. Would it be argued that if the population did very much increase at some point where, by reason of its previous want of population, no such public accommodation had been hitherto granted, no licence might be granted because this additional grant might to some extent interfere with the practical monopoly enjoyed by the persons already licensed? This, of course, could not be argued, since it is a well-understood practice to do this very thing. But could anything be more unreasonable than the suggestion that the legislature had given the discretion in one direction and withheld it in the other?" His lordship went on to add some words which have been cited, I suppose, in almost every Licensing Court in the country since they were delivered. "This extensive power is confided to the justices in their capacity as justices to be exercised judicially. The discretion means, when it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not to private opinion, according to law and not to humour. It is to be not arbitrary, vague, and fanciful, but legal and regular; and it must be exercised within the limit to which an honest man constrained to the discharge of his office ought to confine himself."

The licence-holder is protected against the capricious refusal of his licence by reason of the fact that before the justices can entertain an objection to the renewal thereof, **notice of that objection** must be served upon the licence-holder.

It is not necessary for a person who intends to apply for the renewal of a licence, either beer licence or full licence, to give any notice that he intends so to apply. He need not even personally attend the Licensing Session. It is enough for him to send an authorised messenger or to apply by letter. Of course, he can attend himself if he likes. He must, however, apply somehow, either in person or by letter, or by solicitor or by some other agent, otherwise the justices do not renew, and the licence drops.

The justices may, however, **require the applicant to attend** the General Annual Licensing Meeting for some special cause "personal to himself." This special cause may be, for instance, that the justices have been informed by the police that something has occurred at the house in question which calls for their notice, and they may want the licence-holder to attend to be lectured and cautioned as to his conduct. Or it may be that some objection has been made to the renewal of the licence in proper form, and the justices thereupon issue a notice to the licence-holder to attend the meeting. Objections to renewal may be made either by the justices themselves or some of them, or by some member of the public.

If any member of the public intends to object to the renewal of any licence, he must give written notice of his intention to the licence-holder not less than seven days before the commencement of the General Annual Licensing Meeting. This notice is not good unless it states in general terms the grounds of opposition.

Nobody is entitled to be heard (except as a witness) except a person who has given a notice of opposition in proper form. But if, as sometimes

happens, some member of the public who does not know what the proper procedure is makes an objection in court without having given notice, the magistrates may, if they consider the objection one which ought to be heard, adjourn the grant of the renewal to a future day, and give notice to the licence-holder requiring him to attend on that day; and when the day comes, the justices may hear the objection just as if the proper seven days' notice had been given.

The justices, or some of them, may themselves start the objection at the General Annual Licensing Meeting, though no notice of it has been given; and if any justice, or the whole of the justices, in Licensing Session should start an objection on the spot, the objection must be stated then and there in open court. Then **notice must be given** requiring the licence-holder to attend and answer the objection.

But a mere objection is not enough. The objection must be supported by evidence; and the evidence must be on oath. The applicant for the renewal is in a very different position from an applicant for the grant of a new licence. The applicant for the grant of a new licence is in the position of plaintiff. It is for him to prove his case. But when it comes to a question of renewal, **it is for the objector to prove his objection**. And when a notice of objection has been given in due form, or an objection has been made in court, and the case adjourned for the purpose of considering that objection at a future day, the only objection which the justices may hear and decide upon, is the objection stated in the notice or the objection raised in open court, as the case may be.

Thus, if an objection has been properly raised to the renewal of a licence on the ground that the house is not required for the needs of the neighbourhood, the licensing justices can only receive evidence upon that point and no other. They cannot, for instance, hear evidence to prove that the house is resorted to by persons of bad character or by thieves, or that it is a place so constructed as to defy adequate police supervision. On the other hand, if the objection made is that the house is frequented by bad characters, or is conducted in a disorderly manner, the justices cannot hear evidence intended to prove that the house is not required for the neighbourhood.

The object of this strictness is that the licence-holder who comes to defend his licence shall not have sprung upon him at the last minute, and without warning, charges which he did not know were going to be made, and upon which, accordingly, he is not prepared with evidence in rebuttal.

The proper course of procedure when an objection is to be heard against the renewal of a licence is this: The licence-holder, or his solicitor or counsel, rises and says, "I apply for a renewal of the licence of the Bald-faced Stag, situated in High Street," and then sits down. It is now the turn of the objector. That gentleman, or his solicitor or counsel, may get up and make a speech, and call evidence to prove his objection. He is not limited to one objection provided due notice of more than one

has been given. Suppose a notice of objection has been given stating that the renewal will be opposed on the grounds :

1. That the house is not needed in the neighbourhood.
2. That it is a resort of persons of bad character.
3. That it is improperly conducted by reason of the fact that drunkenness is allowed on the premises.

The objector may make a speech on all these three points, and call witnesses to prove them. If the magistrates then think that the objector has made any sort of case, they should ask the licence-holder or his counsel to call such evidence as he may have to rebut the objection. This having been done, the objector is entitled to address the Court on the evidence that has been given, and the licence-holder is allowed the last word to reply on the whole case.

Suppose it is *the justices themselves who have started the objection*, as does sometimes happen. I am not at all sure that they are entitled to be represented by counsel or solicitor, or to get up a case against the applicant in the same way that a private objector may. The proper course seems to be for the justices to read out the objection which they have themselves made and which they have called upon the licence-holder to answer. Then they can ask if any member of the public present in Court would like to tender himself as a witness in support of that objection. If no person comes forward, they may, perhaps, be entitled to summon into the box any person whom they see in court and whom they believe to know something about the house—such as a policeman, superintendent of police, and so on. And they have, of course, the right to call upon the licence-holder himself to go into the box and to answer such questions as they may put to him. I have stated it to be the law that, except as to wine and beer licences of 1869, the justices have an absolute discretion to refuse to renew on-licences. In practice, owing to the fact that any licences can be refused to be renewed except upon notice given, it comes to this, that justices have an absolute discretion to say whether or not a particular objection is in their opinion a sufficient ground for refusing the renewal. But they are not bound to give any reasons whatever. Suppose, for example, that notice of objection has been served on the licensee, objecting to the renewal of his licence on the grounds :

1. That the house is not necessary for the locality.
2. That the house is resorted to by people of bad character.
3. That the landlord is in the habit of permitting drunkenness on the premises.
4. That the landlord has permitted gaming to take place on the premises.
5. That the house is a disorderly house.
6. That owing to the way the house is conducted, it is an annoyance to the surrounding inhabitants.

We will suppose that evidence is tendered on all these points. The magistrates retire to consider their decision, and when they come back the chairman merely says, "This renewal is refused." Of course, the licence-holder may have a pretty good idea as to the objections he has been hit by ;

but he has no legal means of finding out. Quite different from the man with a wine or beer licence of 1869, the ordinary licence-holder cannot demand any reasons from the justices, either written or otherwise. All he can do is to appeal to Quarter Sessions, and if Quarter Sessions adopt the same plan of not giving any reasons it is practically hopeless for the applicant.

The objection as to needs of the neighbourhood is a very common one. The case made out by the party in opposition is, generally, that there are within easy reach of this public-house on every side other houses where refreshments of the same kind can be readily obtained. Personally, I have found the best answer to this argument to be the production of accounts showing that the house objected to is doing a paying trade. Whether the house is needed by the neighbourhood seems to be rather a question of political economy than of anything else—a question of supply and demand. We know well enough that supply sometimes materially assists demand; but it is a fair assumption that if a public-house were not needed in a neighbourhood that public-house would not do very much business. Of course, it is open to the objector to prove that the paying business done by the public-house in question is not a business done with people in the neighbourhood, but a business done with people from outside—people of an undesirable character, perhaps. Still, it is generally good enough, as an argument in answer to the objection mentioned, to show that the house is doing good business. Therefore, if you are a licence-holder, and such an objection is served upon you, you should take the trouble to get accounts of the beer, spirits, etc., supplied to you by your brewer and your distiller, to show how much liquor has been supplied to you. And it will materially assist you if you can show that it has been supplied pretty regularly month by month or week by week, and not by fits and starts. It will also be of material assistance to you, as showing that your house is required, if you can produce some accounts of your own showing that you have done a steady trade outside the intoxicating liquor trade—as, for instance, that you have supplied a great number of meals during the previous twelve months.

IN SCOTLAND,

the law as to granting new licences has been assimilated to the English law. The systems of the two countries are by no means exactly alike, but they are very similar indeed. In the first place, anyone who wishes to have **the grant of a new licence** must apply in the particular form prescribed by Parliament. The people to whom he applies are, in counties, the Licensing Bench of the district, composed of certain Justices of the Peace; and in burghs, the Licensing Bench of the burghs, composed of burgh magistrates. In burghs where there are not enough magistrates to form a Licensing Bench, a Joint Bench is made up of burgh magistrates and Justices of the Peace from the county in which the burgh is situated. Let me detail the **steps to be taken** by a person applying for a new licence. He must fill up

a form of application specially set out in the Act of Parliament. The form is as follows, being in the nature of a petition :—

“Unto the honourable his Majesty’s Justices of the Peace for the
“County of [in burghs it should be “magistrates of the burghs
“of ”]. The application of William Cullock, licensed victualler, of
“143, Main Street, in the Parish of , in the County of ,
“Humbly sheweth,

“That the applicant is desirous to obtain a certificate for licence for
“an inn and hotel at 143, Main Street, in the Parish of and
“County of , for the ensuing year in terms of the Public-houses
“Acts therein recited, and refers to the answers which are truly made to
“the subjoined queries :

“State whether it is a renewal of a certificate at present in
“applicant’s name, or in that of another party, or renewal of a trans-
“ferred certificate, or a certificate for a new house that applicant desires.

“(Ans. Certificate for a new house.)

“Whether applicant has attained twenty-one years of age. (Ans. Yes.)

“Whether bred to the trade ; or if not, to what other trade or
“business. (Ans. Bred to the trade of a cook.)

“Whether applicant carries on or intends to carry on or follow
“any other trade or occupation. (Ans. No.)

“Whether applicant holds a licence at present ; and if so, state
“where the premises are situated and how long he has held the same.
“(Ans. No.)

“Whether applicant has any interest in any other business in
“premises at present licensed, or for which a certificate is sought ; and
“if so, where those premises are severally situated. (Ans. No.)

“State the actual rent of premises, and the proprietor’s or
“factor’s name and designation. (Ans. The actual rent is £50 per
“annum ; and the factor is Mr. Andrew Fairsewia, 112, McEwen
“Street, Kirkcaldy.)

“WILLIAM CULLOCK.”

You should be very careful to fill this in with the **utmost accuracy**. If you do not, and manage to deceive the Licensing Court into granting you a licence, you will be in a rather bad position if you are discovered ; for the licence will not be worth the paper it was written on ; and if you sell liquor with a void licence you are guilty of shebeening. There was a case not very long ago that went up to the Justiciary Court, where a young man aged nineteen, in answer to the second query, said Yes—the second query being whether he had attained twenty-one years of age. He got his licence, but the Justiciary Court declared it void on the ground that he had obtained it by a false statement in his form of application.

When the justices or magistrates receive one of these applications, they request one of their number to make a **report as to the suitability of the premises**. Unless the magistrate reports that the premises are suitable

for the kind of licence that is wanted, no licence may be granted. This strikes me as a very sensible and proper provision. The report is as follows :—

“I, Donald Macdonald, one of his Majesty's Justices of Peace for the County of Ayr, hereby report that I personally examined the premises described in the foregoing application, and that the same are of suitable construction and accommodation for the purpose applied for, reserving to the justices to determine whether it be meet and convenient to grant the certificate applied for.

“(Signed), DONALD MACDONALD, J.P.”

The third step is for the applicant to go before one of the Justices of the Peace (in a county division) or one of the magistrates of the burgh (in a burgh), and satisfy him that he, **the applicant, is of good character.** And he must, before his application for the licence is heard, produce a certificate from the justices or the magistrate stating the result of the investigation into character. The certificate is in the following form :—

“I, Nichol Jarvey, one of the magistrates of the Burgh of Ayr, certify after careful inquiry that William Cullock, designated in the foregoing application, is a person of good character, and qualified to keep an inn and hotel.

“(Signed), NICHOL JARVEY.”

Having procured your certificate of character and of the fitness of the premises to be licensed, you send them along with your form of application to the Clerk of the Peace for the county or district in which the premises to be licensed are situated. If they are situated in a burgh, you send them to the Town Clerk. **Time is important.** You must send them in fourteen days, at least before the general meeting of the licensing justices or magistrates. This means fourteen clear days before such meetings. In Scotland the meetings are held not once a year, but once every half-year. They must be held in the month of April and the month of October.

Notice of all applications for new licences is to be publicly given. But the giving of this notice is not left, as it is in England, to the applicant himself. It is to be done by the Clerk of the Peace or Town Clerk. The official named must at least ten days before the licensing meeting make out and advertise at least twice, in one or more newspapers circulating in the district, a complete list of all applications for new licences. This list must include applications for licences for new premises, applications for licences by new tenants, and applications for the renewal of transferred licences—I mean for the renewal of licences which have been transferred by justices and magistrates since the last half-yearly meeting. All these practically come under the head of new licences. At the time appointed you appear either personally or by your law agent or advocate before the Licensing Bench ; and you try to persuade them as well as you can to grant you a licence. Perhaps I ought to say that a licence granted by

justices or magistrates is called, in Scotland, a certificate—only an Excise licence is called a licence.

You may be met by an objection. But the law is not the same as it is in England. The only people who have the right to object to the granting of a licence are people who own or occupy property in the neighbourhood of the house proposed to be licensed. And these people cannot merely turn up at the court as objectors to new licences as they can in England: they must give due notice of objection.

Notice of objection must state the grounds of objection; and must be lodged with the clerk to the justices or the town clerk, as the case may be, not less than five days before the licensing meeting. The objector must also leave with the applicant for the licence a copy of his notice of objection not less than five days before the licensing meeting. Unless the applicant was duly served with notice of objection in proper time, the licensing magistrates cannot hear the objection. It is a sufficient delivery of this notice to post it to the applicant at the address given by him on his form of application. It appears that if the objection to the grant of a new licence fails, the justices or magistrates cannot in any case make the objector pay expenses to the applicant. But the police, or the procurator-fiscal, may object without notice.

Let us suppose you have prevailed on the Licensing Bench to grant you a new licence. You have another ordeal to go through, just as you would have in England. You have to **apply for confirmation** to the confirming authority. The confirming authority is, in counties, the county licensing committee. The county licensing committee consists of not less than three and not more than four Justices of the Peace, selected by the justices in Quarter Sessions assembled. Three members form a quorum. Every county committee must have a chairman; and if the committee is equally divided the chairman has a casting vote. By casting vote, I mean a second vote. You had better look out that any county committee you may have to deal with shall not be equally divided; because I have always found that in such a case the chairman gives his casting vote against the licence.

The confirming authority in burghs consists of a joint committee of burgh magistrates and county justices, two of each. Except where the burgh has only two magistrates, there are to be two burgh magistrates and two county justices. The senior magistrate on the joint committee is chairman and has a casting vote. I need hardly tell a Scotsman that the provost or lord provost is senior magistrate for the time being.

The application for confirmation is made by giving notice to the committee. The notice must be in this form:

"To the County Licensing Committee for the county of (Ayr).

"I, William Cullock, hereby apply for confirmation grant made to me
"of the certificate herewith produced by the Justices of the Peace of
"the county of Ayr, on the tenth day of April, 1902.

"(Signed), WILLIAM CULLOCK."

This notice may be signed by the applicant's law agent instead of by

the applicant himself; and it is wise to employ a law agent for a job of this kind. For when the county licensing committee sits to hear applications for confirmation, the confirmation may be opposed both by the people who objected in the first instance and by the procurator-fiscal. The latter appears on behalf of the public generally, to protect the public interests. And the licensing committee, in hearing an application for confirmation, is not bound in the least to pay any respect to the decision of the justices or magistrates who granted the licence in the first instance. The application for confirmation is not in the nature of an appeal; and *the opposition may call evidence* quite new in order to strengthen its objection. No person, therefore, even though he is an owner or occupier of property near the premises proposed to be licensed, can appear before the county licensing committee (or burgh joint committee) unless he gave notice of objection and appeared to object before the Bench which granted the licence first.

As in England, so also in Scotland, **licences must be renewed annually.** The holder of the licence who wishes to renew it must send in an application to the justices' clerk or town clerk in the form mentioned on p. 1447. He must send it in in exactly the same way that he did when he applied for a new licence (*see* p. 1447). But in the case of a renewal he need not procure either a certificate that the premises are fit and proper or a certificate of character. Moreover, applications for renewals need not be advertised in the same way as applications for new licences.

Objection may be taken to the renewal of a licence by persons holding or occupying the property in the neighbourhood of the house. An objector must give five days' notice to the licence-holder, and lodge a copy of his objection with the clerk of the justices or town clerk five days before the licensing meeting. The notice of objection must state specifically the grounds of such objection, and the objector is entitled to be heard by the Licensing Bench only on the grounds specified in his notice. He cannot ramble off in generalities. It may, however, be a rather more expensive pastime to object to the renewal of a licence than it was to object to the granting of a new licence. For if the justices or magistrates consider that an objection against the renewal was frivolous and vexatious, they may make the objector liable in such expenses as they deem proper. Also, if they find that the notice of objection was given by some agent who had no authority to give it, they may deal with him by making him pay the expenses.

I ought, perhaps, to say that both as to the granting and renewal of licences, objection may be taken without notice by any of the Justices of the Peace or magistrates, or by the procurator-fiscal, chief constable, or superintendent of police. The objection taken may be taken verbally or in writing. And if it is taken the Licensing Bench must consider it at the general meeting. Thus it is quite open to a magistrate, when application for renewal of a licence is made, to raise some objection from the Bench. Be it noted that he must raise some particular objection. This objection may come as a surprise to the person whose licence is impeached; nevertheless, he must answer it. If it is some charge which he thinks he can rebut if time is given him to

prepare his case, he should ask the Bench not to hear the objection at that moment, but to adjourn the hearing of his application to some future day, and give him time to collect evidence which shall meet the objection raised. As a rule, objection to the renewal of licences is made by the procurator-fiscal or by the police authorities.

It used to be thought by persons of no little authority that owing to the peculiar wording of the Public-houses Act, 1862, a person who desired to obtain **a different licence for a house already licensed** could do so by way of renewal. That is to say, that he need not procure the certificates of fitness of structure and excellence of character, that his application need not be advertised. Thus it was believed that a man who held a dealer's or grocer's licence, which empowered him only to sell liquor to be consumed off the premises, could, when he applied for a renewal thereof, have his licence renewed as a publican's licence, or even as an inn and hotel licence. This contention has been quite shattered by a case decided in the Superior Courts at Edinburgh. The Lords and Sessions have held that the three kinds of licences grantable by the Scottish licensing justices are all separate and distinct the one from the other; and, therefore, that if a person already licensed by one kind of licence wishes to procure another kind of licence, he must make application just as though he held no licence at all.

Naturally, this makes a very great deal of difference. Thus, suppose you have a grocer's licence and you wish to convert your business into a public-house pure and simple. You intend to give up selling groceries, and to sell nothing but liquor and cooked victuals. You must make application in the form above cited on p. 1447, procure a certificate that your premises are fit for a public-house, and go before the justices and procure a certificate of character. And after you have got your licence granted by the Licensing Bench, you must apply for a confirmation thereof, and run the risk of having it refused by the county Licensing Bench or the burgh joint committee.

APPEALS.

An appeal lies to Quarter Sessions against the decision of licensing magistrates in almost exactly the same way as it does in England. The only decision from which there is no appeal is a decision by the Licensing Bench or the confirming authority whereby a new licence is refused. Thus, if you apply to the burgh magistrates for a new licence, and they refuse it, you cannot appeal. If the burgh magistrates grant your application and then you go before the burgh joint committee for confirmation, and the joint committee refuses to confirm the grant, you have no appeal. On the other hand, if your new licence is granted by the burgh magistrates and the joint committee, the police, or procurator-fiscal, or any person who gave notice of objection, may appeal to Quarter Sessions against the grant.

But if you apply for a renewal of your licence, or transfer under proper conditions, and the licensing magistrates refuse your application, you may appeal to Quarter Sessions. So, also, any person who has objected to such

renewal in proper form may appeal to Quarter Sessions if the renewal is granted.

I have already told you that if the licensing justices of any borough or district **decline to grant you a new licence**, you have no right of appeal at all. You have, however, a right to appeal if the licensing justices refuse to renew a licence. The manner of this appeal varies. I will explain later what you ought to do if the justices make some mistake in point of law pure and simple. You have certain means of direct access to the High Court to correct their mistakes. But this kind of appeal can only be used rarely, and is not the method that should be adopted as a rule.

There is one way of appealing from a decision of the licensing justices whereby they refuse to renew a licence which is open to you, whether the decision is a decision against you on a point of fact or on a point of law. Sometimes, of course, you do not know what is the ground of the justices' decision against you; because they are not bound to give any reasons except in the case of the 1869 wine and beer-house licence. This does not make much difference. The appeal I refer to is the appeal to Quarter Sessions.

Quarter Sessions is a curious tribunal composed of Justices of the Peace from the county—that is to say, composed of county justices. It is not by any means essential that any of these justices should be trained lawyers. Very often it happens that there is in the county amongst the county justices some person of legal skill who either has practised the law or has been trained to practise it, but who has devoted himself to public life in the county and takes an active part in the work of Quarter Sessions. In such a case you will generally find this person acting as chairman of the County Sessions. The chairman, however, has no particular power more than anybody else, except that he delivers the judgment of the Court; but that judgment is arrived at simply by the votes of the justices present.

Now an appeal from licensing justices goes to the Quarter Sessions of the county, no matter whether the licensing justices in question were county justices or borough justices. Thus, if the Birmingham licensing justices refuse to renew the licence of an ale-house in Birmingham, an appeal lies from their decision, not to the Birmingham Borough Sessions, presided over by the Recorder of Birmingham, but to the Warwickshire County Sessions.

Let us suppose that **the renewal of your licence is refused** by the licensing justices. You think the refusal wrong and unjust. I advise you to appeal to Quarter Sessions, and to make up your mind about it at once. You had better go to a solicitor, if you have not already engaged one, and ask that gentleman to do all that is necessary. And if he requires your co-operation in any way you had better give it promptly, or you will find yourself left out in the cold. I say that promptitude is absolutely necessary, for the reasons following:—

(a) The appeal must be made to the next Quarter Sessions held after the Licensing Session on which your renewal was refused. But if the next Quarter Sessions are held within twelve days of the date when the justices refused to renew your licence, as less than twelve days would not be enough

time for you to get up your case and give a proper notice of appeal, you are allowed to appeal to the following Quarter Sessions. Thus, suppose that at a meeting of the licensing justices held on the 14th of September the licensing justices have refused to renew your licence. If the next Quarter Sessions for your county should be held on or after the 27th of September, you must be ready to appeal to, and have your case heard by, the Quarter Sessions then held. But if the Quarter Sessions should be held on the 25th (say) of September, your appeal will not be heard then, but will be held over until the following Quarter Sessions, which will be held probably in January.

(b) The proper people to be made **defendants to the appeal** are the licensing justices, whose decision you complain of. You must give them notice of appeal within five days after the act complained of was done—that is to say, within five days of the date when they refused to renew your licence. And you must give the notice—so the rule appears to be—at least fourteen days before the Quarter Sessions sit. Now you can easily see that these requirements conflict with the rule that you must bring on your appeal if the Quarter Sessions sit not less than twelve days after the decision of the licensing justices. Suppose the licensing justices give their decision on the 10th of September, and Quarter Sessions sit on the 23rd of September, you clearly cannot give your notice of appeal fourteen days before the sitting of Quarter Sessions. And yet, apparently, if you do not give notice of appeal for those Sessions you are out of time, because of the twelve-day rule above stated. Of course, the contingency rarely arises; and in that case I should think the Court of King's Bench would probably decide that the twelve-day rule is the one that must be adhered to. I cannot further speak with any confidence.

(c) The notice must be given within the five days to **all the justices who sat at the Licensing Session** where the order complained of was made. You should not make the mistake which I once knew made of simply serving the notice on the majority of the justices. I once knew a case where six justices sat at a Licensing Session, and by a majority of four to two refused to renew a certain licence. The publican appealed, and served his notice of appeal only on the four justices who had composed the majority against him. Of course, this was wrong, because the refusal to renew the licence, though it was only in fact the act of the four, was in law the act of the whole Court—that is, the six.

The notice should be served either by giving it to each of **the justices in person** or by leaving it at his house. I have known people appealing under these circumstances to make the mistake of sending the notice of appeal to the justices' clerk. This is good enough under some circumstances, but it does not apply to licensing matters. In licensing matters, when a decision of the justices is appealed against, the clerk to the justices does not represent them as a body.

(d) The notice of appeal must be **written and signed** either by the person giving the same or by his solicitor.

(e) It **must state the grounds** of the appeal. And as the law is very

strict, that when the case is heard at Quarter Sessions you cannot go outside the grounds stated in the notice of appeal, you should take great care that the notice in the case contains every possible ground that suggests itself to your mind or to the mind of anybody else who you call in to your assistance. Because although you cannot argue against the adverse decision except on some ground stated in your notice, you are not bound to argue on every ground stated in your notice. If you give notice of appeal on fifty grounds you are entitled to succeed if you prove one of them, provided that one is a good ground.

(f) Within the five days after the adverse decision the appellant must give security that he will prosecute his appeal and pay costs if he is ordered to do so. The way this is done is by going before a magistrate and offering to enter into a recognisance. This is a written promise to pay a certain sum of money, but upon condition that if you prosecute your appeal before the Court of Quarter Sessions and pay any costs that may be ordered to be paid, the recognisance should be void. It will not do simply for you yourself to enter into this bond. The law requires that you shall take with you **two sufficient sureties** who shall also promise with you that they will be responsible in the matter.

You see, therefore, how important it is that you should hurry if you intend to appeal. You have to prepare your notices, putting down every conceivable ground of appeal; you have to make a copy for each one of the justices who sit; you have to serve a copy to each one of those justices, either personally or at his house; and you have to find two persons of substance and good repute and take them with you before a magistrate to enter into this recognisance. And all these things must be done within five days after the decision has been given against you. The wise man employs a solicitor in such cases.

As a rule, the only person who can appeal in any cause or matter is a person who was a party to it before the inferior Court. This rule does not hold good in licensing appeals. Again, as a rule, all people who have a right to be heard before the inferior Court have also the right to appear and be heard before the appeal Court. Neither does this really hold with regard to licensing matters. Suppose a licence-holder who is a mere tenant of a public-house applies for a renewal of his licence, which renewal is objected to by three people—Mr. Jones, Mr. Brown, and Mr. Robinson. Having heard these three gentlemen, who appear by counsel and produce witnesses, the licensing justices resolve not to renew the licence. In the ordinary course of events—in any other sort of case except a licensing case—no appeal could be brought except by the tenant of the public-house, and the persons who would be made the opposite party to the appeal would be Messrs. Jones, Brown, and Robinson. But in this case, although the tenant of the public-house may appeal if he likes, the owner of the premises may also appeal. For the Licensing Act says that a person “aggrieved” may appeal to Quarter Sessions. By “person aggrieved” seems to be meant any person whose pocket would be injuriously affected by the decision. And as, of course, the owner of

licensed premises is very much affected if a licence is refused to be renewed, he is a person aggrieved and he could appeal. This is quite apart from the consideration of whether he appeared in the matter before the licensing justices or not.

Moreover, if Messrs. Jones, Brown, and Robinson have nothing to do with the appeal whatever, although they were the opponents of the licence and are the persons through whose exertions the renewal was refused, the defendants are the licensing justices, and they alone. If Messrs. Jones, Brown and Robinson choose to go to the Court of Quarter Sessions and ask to be heard, in person or by counsel, the Court of Quarter Sessions, it seems, may allow them to be heard, but need not do so.

A practice arose in some boroughs of recent years of the Borough Council taking up licensing, and opposing, at the expense of the ratepayers, the renewal of certain licences which they thought detrimental to the interests of the town. It was doubted very strongly by lawyers whether a Council had any power to do this sort of thing at the expense of the borough; and at last the matter was thrashed out in a case that went to the House of Lords. The highest tribunal decided that a Town Council cannot charge the Borough Fund with such expenses.

There is also a method of appealing to the High Court direct from the licensing justices when those gentlemen refuse to hear and determine the case according to law. This kind of appeal is clearly a matter for legal assistance; and you would be very foolish to undertake it without the aid of a solicitor. But it will do no harm for me to tell you the kind of case in which you have some chances of success.

As far as I know, the usual case where the judges of the High Court grant what is called a mandamus, calling on the licensing justices to hear and determine a case according to law is **where the justices have clearly travelled outside the limit of their jurisdiction**. For example, in a case of a wine and beer licence, 1869, where the licensee has applied for a renewal, and the justices have refused to renew upon some other ground than one of the four mentioned on p. 1440. Seeing that the law is that these four grounds are the only four upon which they can refuse to renew such a licence, the justices in refusing upon some other ground have clearly travelled outside their jurisdiction. The High Court will probably interfere in such a case.

I want you to understand that the High Court will not interfere in this manner merely where there has been an erroneous decision. If the licensing justices, after having fully heard a case, decided wrongly, the only appeal you have is to the Court of Quarter Sessions as above described. Your appeal direct to the High Court is only that it appears that they have taken into consideration matters which are absolutely outside the limit of their jurisdiction, and absolutely apart from the matters which by law ought to be taken into consideration.

Such a case occurred when certain licensing justices granted a licence to an applicant upon condition that he gave a contribution to some street improvement fund. No doubt the worthy gentlemen meant well; but from a legal

point of view they might as well have offered the licence to the applicant on condition that he gave to each of them as a birthday present a gold watch and chain. The mandamus was granted calling upon those justices to hear and determine the applicant for the licence according to law.

I want you to understand, the High Court will not interfere with the licensing justices so far as to tell them they must grant a licence or they must refuse it, or they must renew it, as the case may be—the granting and renewal of licences, be it remembered, are in the discretion of the licensing justices. Therefore, if the Bench has taken into consideration matters outside its jurisdiction, the Court delivers a decision saying that these matters ought not to be taken into consideration, and then sends the case back to the justices with an order for them to hear it again. The justices are, of course, bound to hear it again; but they are not bound to come to a conclusion in favour of the party which upset their previous decision.

The same considerations apply where the justices have refused to listen to evidence or have taken evidence in opposition to the renewal of a licence which was not on oath. I was once in a case of this kind: the licensing justices of a certain borough had passed a resolution before they came on the bench to the effect that they would not renew any beer licence (except the 1869 licences) unless the applicant consented to supply meals to his customers. In other words, they had made up their minds to abolish houses which existed solely and wholly for the drinking of beer. The chairman of the Bench, when he came on, informed all whom it might concern that the justices had resolved to take up this attitude. Now I appeared on behalf of a beer-house keeper whose licence had been objected to, and in the course of the case I was asked if my client was prepared to undertake to supply meals. As a matter of fact, the house had no accommodation for the supply of meals. I therefore declined to give the undertaking. The justices promptly refused to renew the licence; and I as promptly applied to the High Court and got their decision quashed. You see that they had taken into account something which did not concern them legally. They had done more than this—they had actually decided a whole batch of cases beforehand, which is just what they must not do.

I once advised in a case also where the justices of a certain district had made up their minds not to grant any new licence whatever. A man put in an application for a new licence, and when he appeared with his solicitor to make the application, the solicitor had hardly got upon his legs to begin to state his case when the chairman of the Bench said, "Mr. Blank, it is quite hopeless for you to apply for a new licence. You know we never grant any new licences in this district. We therefore decline to have the time of the Court wasted in hearing this application." This was a rather strong order. The solicitor sat down. I was asked to advise what was to be done, and I advised an application to the High Court for a writ or mandamus to compel the justices to hear and determine the application. But I pointed out that, even if the High Court directed them to hear and determine

the application, there was nothing to prevent the Bench, after hearing the application, from determining it against the applicant. In fact, I said what I say now here—if you have plenty of money to spare and desire to teach the Licensing Bench its duty, apply for and obtain a mandamus; but with a Licensing Bench of that character it is extremely unlikely that your mandamus will carry you any “forrader.” In fact, to fight a Licensing Bench which has the support of Quarter Sessions is a particularly thankless task.

Another case when the High Court will interfere is where one of the justices who has sat to hear the application is **disqualified either by interest or by bias.** It does not matter whether the bias in question is in favour of or against the applicant. I mean that if any of the Justices of the Peace can be proved to be biased in favour of the applicant in such a way that he would grant the licence whether it ought to be granted or not, any person who appeared before the licensing justices to object to the licence may, if the licence be granted, procure an interference of the High Court and have the case reheard. On the other hand, if one of the justices is so biased that he will inevitably use his vote and influence to have the licence refused without regard to the merits of the application, if the licence is refused the applicant may obtain the interference of the High Court.

The Licensing Act, 1872, says that no justice shall act in a licensing case, or in any case under the Intoxicating Liquor Licensing Acts (except the criminal charges of drunkenness), who is a common brewer, distiller, maker of malt for sale, or retailer of malt, or retailer of any intoxicating liquor. But the justices, in order to be disqualified, must carry on one of these businesses either in the licensing district or in the district or districts adjoining to that for which such justice usually acts. The disqualification is a very wide one. It extends not only to a man who carries on one of these businesses himself, but also to a man who is a partner in such a business, even if he is only a sleeping partner who has not any right to take part actively in the business. It even extends to a shareholder in a company which carries on such a business.

A friend of mine told me a very humorous story of something that occurred in one of the North Country towns—I believe it was Leeds. A member of the Licensing Bench there was a well-known temperance man, an active leader in the teetotal cause in those parts. I need hardly say that this gentleman always did his very best to support any objections that were made either to new licences or renewals. But the said Justice of the Peace bought some shares in a railway company. This railway company had an hotel in the town, therefore the worthy magistrate was a shareholder in a company which carried on the business of selling intoxicating liquor by retail in his district. An objection was taken to the renewal of the licence at the following Licensing Sessions. The magistrate in question appeared upon the bench, and it was pretty obvious to the publican whose licence was objected to that the composition of the Bench was such that the renewal would certainly be refused by a majority of one vote. The

solicitor for the publican promptly rose and objected to the aforesaid magistrate sitting on the bench. The magistrate was aghast. But on the solicitor putting it to him that he was a shareholder in the railway company which carried on the business of an hotel in the town, the magistrate admitted this fact, and was forced to retire from the bench. The result was that the justices were evenly divided, and under the circumstances renewed the licence in question. The humorous part of it was, of course, that the person objected to was objected to on the ground that he was interested in the liquor traffic, when, in fact, he would have used his whole weight against it. I should think he sold out his railway shares after that.

It has been held IN SCOTLAND that a justice holding railway shares is not disqualified. A justice, however, is not disqualified under this section where he has merely a legal interest and not a beneficial interest in the premises or the profits thereof. That is to say, he is not disqualified if he is merely a trustee of a brewery business or a licensed house, etc. A justice who acts under the Act, knowing that he is disqualified by reason of interest, is liable to a penalty not exceeding £100; and this penalty may be recovered against him by action at the suit of the Crown. "Knowingly" means that the justice knows that he has an interest, though, perhaps, he may not be aware of the legal consequences of that interest. For instance, if the magistrate of the northern town, after having had it pointed out that he was an interested party, had persisted in sitting on the bench and adjudicating on the licence, he would have been liable to this penalty—and this even if he had been of opinion that his interest as a shareholder in the railway company did not disqualify him.

Other cases are where justices have taken some active part in opposing or forwarding the grant of a licence. For instance, a Justice of the Peace who was a member of a temperance association was present at a meeting which instructed a solicitor to oppose the transfer in a particular licence. The solicitor was present at the meeting; and the justice left before the solicitor was actually instructed. Then the justice sat on the Licensing Bench to hear the application for the transfer. The Bench refused the transfer. On application to the High Court, the decision was set aside on the ground that one of their number was practically acting as prosecutor and judge.

It is not enough, however, **to constitute bias** to show that the justice is a strong teetotaler. You must show that he has taken some part in opposition to the particular licence which has been refused in some other capacity than his capacity as justice. It is also important, if you know that a justice is biased or interested at the time your application is heard, for you or your counsel then and there to object to the presence of that justice. For you may, if you like, waive the objection; and this is not unfrequently done. For example, I have been present at Licensing Sessions when one of the justices had said, "I am a shareholder in the Great Western Railway Company, which, as you know, has an hotel in this district. I am quite prepared not to sit if anyone objects." It is not

often anyone objects. As a rule, no one does object, and in such case no one could afterwards raise an objection.

It is, of course, a very serious matter when the licensing justices refuse to renew a licence. And it is a still more serious matter **when the justices forfeit a licence for an offence** against the Licensing Acts. The refusal to renew or the forfeiture may be quite wrong; and it may be possible to appeal to Quarter Sessions and to have the decision overruled. But what is to happen to the publican's business while he is appealing?

A licence for the sale of liquor holds good until the 10th of October (in Middlesex and Surrey the 5th of April), and no longer. Suppose, therefore, that a licence is refused to be renewed at the Annual Licensing Sessions, which has been adjourned until just about the latest time to which it is possible for it to be adjourned. It is possible, as I have said before, for the general licensing meeting to be continued until the end of September (March in Middlesex and Surrey). I remember a case in which I was concerned where a licence was refused to be renewed; after a very long struggle it was continued at no fewer than three hearings. The licensing justices finally gave their decision against the publican on one of the last three days in September—I forget whether it was the 28th, 29th, or 30th. Now this man had to give proper notice of appeal to Quarter Sessions; and to do this and to get his appeal heard was quite impossible before the 10th of October. You see, his licence expired on the 10th, and if he sold a single glass of beer or a small whiskey after that date he would be subject to heavy penalties which await people who sell intoxicating liquors without a licence. What was he to do?

What is a publican to do if his licence expires while he is appealing? The proper course is for him to apply, through the local Inland Revenue officer, to the Commissioners of Inland Revenue, requesting them to grant him a temporary licence while his appeal is pending. For it may be that the appeal will not be heard until the Quarter Sessions, held about Christmas-time. The Commissioners of Inland Revenue grant applications of this kind almost as a matter of course, and you will probably receive a document as follows:—

“The day of , 1902.

“Upon reading the application of William Jinks, dated the 28th day
“of September, 1902, the Commissioners of Inland Revenue hereby order
“that William Jinks be permitted to carry on his business as a retailer
“of spirits, beer, and wine at the house and premises known as The Spotted
“Dog, in Carnton, during the pendency of his appeal against the refusal
“of the justices to renew his licence.

“By Order of the Commissioners,

“———, Secretary.”

Such a licence from the Inland Revenue authorities is a sufficient warrant to you to carry on your business until your appeal should be heard. The temporary licence may only be granted upon conditions—it being in the power of the Commissioners of Inland Revenue to annex such conditions as they think proper.

When a licence has been forfeited then and there on some conviction—for certain offences, as I shall subsequently relate, entail forfeiture of a licence—it is always open to the publican to appeal. And when he does appeal he may go to the justices who convict him of the offences whereby he forfeited his licence and ask them for a temporary licence to carry on business until his appeal shall be heard. As a rule, when a publican is convicted of an offence and his licence is forfeited, the justices in Petty Sessions are quite ready to grant a temporary licence until the appeal is settled. Such a course seems to be only fair and right. Indeed, I have only heard of one case where justices have refused a temporary licence. As I read the Act I do not think they are bound to grant any such licences. I think they would be quite entitled, if they choose, to refuse any temporary licence at all. Nor do I see how a publican can appeal against their refusal to grant him a temporary licence. He might appeal against the conviction, and upset the justices on that point; but I do not see what remedy he has between the time of his conviction and the time his appeal is heard. For in this case the Inland Revenue authorities have no power to grant temporary licences pending the appeal.

TRANSFER AND REMOVAL OF LICENCES.

At the Annual Licensing Sessions the justices there sitting are to appoint for the following year not less than four and not more than eight Special Licensing Sessions to be held during the licensing year. These Special Licensing Sessions are particularly constituted in order to deal with cases of transfer and removal.

By transfer of licences is really meant the granting of a new licence to a new person in respect of old premises. Thus, if I hold a licence for The Spotted Dog, and I agree to sell The Spotted Dog and the trade and goodwill thereof to you, we have to go before either the Special Session or the Annual Licensing Session in order to have a licence granted to you for The Spotted Dog to take the place of the licence that I hold.

There are certain cases in which transfers ought to be made. The first is the death of the licence-holder. In such a case the heirs, executors, or administrators of the deceased may carry on his business until the next Special Sessions, and may then apply for a transfer of the licence to themselves or to some person to whom they have sold the business.

The next case is where a person shall become sick, or by reason of some other infirmity be incapable of keeping an inn. In that case the sick man—or, if he is a lunatic, his committee—must apply to have the licence transferred to somebody to whom the sick or incapable person has transferred his business. The third case is that of bankruptcy. In this case the trustee of the bankrupt, who may be an official receiver, or the person to whom the trustee is assigning the premises or the business, may obtain a transfer. The next case is where the licence-holder is simply removing or giving up possession from whatever cause. Here the proper person to apply for a transfer is someone to whom the licensed person has sold it or transferred his interest.

There is another case, and that rather a curious one, which applies as between proprietor of a house and the tenant. It may happen that the tenant has quarrelled with his landlord. Let us suppose that is the case, and that the tenant has given notice to the landlord to quit the house at Christmas. Now the tenant says to himself, "My existing licence will run till the 10th of October, and there is no particular reason why I should renew the licence for my own benefit, seeing that I am leaving the house at Christmas. If I do not apply for a renewal the landlord will be in a great mess." For once the 10th of October is passed without the licence being renewed; the licence is at an end, and a new one will have to be applied for.

But the Licensing Acts make provision for this case. If any occupier of an inn or public-house, being about to quit, wilfully omits or neglects to apply at the general licensing meeting or some adjournment thereof for a renewal of his licence, then the owner of the premises is not bound to wait until the next general licensing meeting—he may apply for a licence at one of the Special Sessions. Such licence is in effect a new licence, and should be applied for in the name of the new tenant.

The removal of a licence, which is also sometimes called a transfer amongst people in the trade, is really a new licence granted to a person already licensed, but in respect of different premises. The circumstances under which this kind of licence is granted are :—

1. The *house is being pulled down* or occupied under the provision of any Act for the improvement of the highways or some other public purpose. In this case the person whose house has been taken for the public purpose may get another house, open it as an inn, or promise to open and keep it as an inn, and apply to the Special Licensing Session for a licence for the new house instead of the old one.

2. When a *licensed house is rendered unfit* for the purpose of a licensed house by fire, tempest, or other unforeseen and unavoidable calamity, the licence-holder may set up another house and apply for the removal of his licence to the new house in place of the old one.

3. Where *the licensed person has been convicted* for the first time of any one of the four offences specified on p. 1441, and in consequence becomes personally disqualified or has his licence forfeited, the owner of the inn may apply first to a Court of Summary Jurisdiction (magistrates sitting in Petty Sessions) for temporary authority to carry on the business, and may afterwards apply to the Special Sessions, which shall be held next for the granting of a transfer to some new tenant. For example, suppose Stones is the landlord of The Blue Boar, and one fine day he is convicted of receiving stolen goods, knowing them to be stolen. Bang goes the licence of The Blue Boar. The owner of that inn should forthwith apply to the magistrates for a temporary authority, which will carry him on to the next Special Licensing Session. He may apply either in his own name, or he may get some other person to take the premises and let that person apply. The application is made exactly in the same way as if the convicted felon had been a man who was retiring from the occupation of The Blue Boar.

When a transfer is merely a transfer by a person who is going to remove from his inn to a new tenant, the application for liberty to transfer is made by the holder of the licence. It is the duty of the applicant for such a transfer to serve notice of his intention to transfer his licence upon one of the overseers of the parish, township or place, and also on the superintendent of police of the district. The notice must be signed by the applicant or his agent, and must state the name of the person to whom the licence is to be transferred, his residential address, and what his trade or calling has been during the six months prior to the notice.

You observe that such a notice is only required in the case of the ordinary transfer. In the case of a removal or transfer in **an emergency case**, different rules apply. In such a case, the applicant for the transfer must on some one Sunday within six weeks immediately preceding the Special Licensing Session affix or cause to be affixed on the door of the house proposed to be licensed, and on the door of the church or chapel of the parish, a notice similar to the one directed to be affixed by people applying for new licences. The form of this notice is given on p. 1432. By an emergency case I mean a case where the necessity may arise suddenly for a licence to be transferred or removed, as where the licence-holder dies or suddenly becomes incapable of keeping an inn, or where the house is burnt down.

A transfer or removal of a licence is by no means a matter of course. In fact, the justices at Special Sessions have as great a discretion with regard to the renewal of licences. This discretion is absolute in most cases --and the only on-licences which the judges have not a discretion in are the 1869 wine and beer licences, where they are restricted to the four grounds mentioned on p. 1440. Now with regard to the transfer or removal of licences, the discretion of justices is precisely the same. That is to say, they have an **absolute discretion to refuse a transfer** in all cases except in the case of houses licensed to sell beer or wine on the premises before May, 1869. With regard to the 1869 wine and beer houses, they may only refuse to transfer the licence on the four grounds stated on p. 1440.

CHAPTER III.

THE CONDUCT OF LICENSED PREMISES.

Name to be put up—Description of licence—How liquor may be sold without a licence—Selling liquor not licensed to sell—Off-licence holder evading conditions—Drinking in adjacent highways—Drinking in adjacent premises—Privy or consent—Sale to a messenger—Sending out liquor—Sufficient proof of sale—Unlicensed restaurant—Communication between licensed and unlicensed premises—Not necessarily buildings—Temporary communication—No new door to be opened—Illicitly storing liquor—Whiskey in a beer-house—The risk of it—Spirits in a wine-house—Permitting drunkenness—Riotous conduct—The “chucker-out”—Knowledge that drunken person is there—Selling liquor to drunken person—Ignorance no defence—Publican not bound to serve anyone—Responsibility for manager or servant—Varies according to the servant's employment—General instructions to servants no defence—Manager not like other servants—Drunk and sober men entering together—Sale to sober man for drunken man's consumption—Mitigation of punishment—Resort of prostitutes—Guilty knowledge essential—Entitled to refreshments—Using house as brothel—Harbouring reputed thieves—The dangers of a “friendly lead”—Harbouring constables on duty—Supplying constables on duty—The armlet case—Reasonable precautions—Permitting gaming on premises—Gaming means playing for money—The publican's private friends—A warning—Unlawful games—What is a game of skill?—Contravening the Betting Act—Paying bets on premises no offence—Receiving money is an offence—And receiving betting slips—One bet does not make a betting-house—Two bets may—A case from Kensington—Prohibited hours—Time means Greenwich time—The punctual judge—Different hours of closing in different places—The Metropolitan district—Towns and populous places—Rural districts—Except in London magistrates may make variations for Sunday—Welsh Sunday closing—Night houses—Off-licensed grocers—No need to close whole of shop—Sufficient to close part where liquor is—Three offences during prohibited hours—The landlord's friends—Staying to finish a drink—The jolly farmers—Importance of a locked door—The *bonâ fide* traveller—Can demand refreshments at any time—Only where house has on-licence—Liquor to be consumed on the premises—What is a *bonâ fide* traveller?—A popular misconception—Man travelling for drink is not a *bonâ fide* traveller—The Northampton case—Publican to take precautions—A traveller by railway—Entitled to be served at railway stations—Welsh cases—A distinction and a difference—Evasion will not be tolerated—Lodgers may be served at any time—Also private friends—A friend is someone not a customer—Refreshment houses—Time of closing—Welsh Sunday Closing Act does not apply—Sale of liquor to young people—Sale of spirits to child under sixteen—Apparent age to be taken—How to prove age—Persons under the age of fourteen—Liquor not to be sold to—Except a reputed pint in a corked and sealed vessel—Knowledge to be proved—Power of the police—To enter licensed house—Not entitled to enter private room—Except on reasonable suspicion—Friendly society's room—A check to curiosity—A reasonable time—Constable may only enter where house licensed by justices—Search warrants—Shebeening by wine-house keeper—Licensed refreshment-house keepers—Payment of wages in public-houses—Billeting of soldiers—Publican entitled to keep order—To eject disturber—Difference between an inn and a public-house—Inn-keeper must supply travellers—Except for good reason—Ordinary publican need never serve anybody—Endorsing convictions on the licence—Record of convictions in register—Three endorsements forfeit the licence—Disqualification where licence

orfeited—Disqualification of premises—Two ways of disqualifying premises—Four convictions within five years—Two forfeitures within two years—Offences five years old do not count—Except for disqualification of premises or person—Appeals against endorsements—SCOTTISH LAW—Sale of liquor to children—Harbouring a constable—Provision sellers—Forms of Scottish certificates—Three kinds for inns and hotels—For public-houses—For grocers and provision dealers—Breaches of certificate—Fraudulent adulteration—Applies to food as well as drink—Sale of uncooked provisions by on-licence holders—Knowingly permitting breach of the peace—Actual guilt essential—Allowing persons of bad fame to assemble—The meaning of “notorious”—Landlord need not know—Does the object of the meeting make any difference?—Must the meeting be by appointment?—Allowing boys and girls to assemble—Children apparently under fourteen—Landlord to make inquiries—Taking goods as security for drink—Allowing unlawful games—No unlawful games in Scotland—Playing for money not an unlawful game—Maintaining good order and rule—The Betting Acts—Prohibited hours—Keeping open house—Not merely having door open—Unless for sale of liquor—Men coming out after closing time—Giving out liquors—A nip to keep out the cold—Sampling whiskey on grocer's premises—A friendly gift—Gift to a customer's friend—Grocer and publican must not serve lodgers—Hotel-keeper may serve travellers and lodgers at any time—What is a traveller?—Railway servant—When does a traveller cease to be a traveller?—Sufficient inquiries—Filling a bottle—People lodging in the house—And their friends—When is the licence-holder responsible for his servants?—Acts within the scope of employment—The barman and his friends—Janet and her admirer—Charges to be stated definitely—Alternatives insufficient—Magistrates' discretion as to punishment—Must be exercised reasonably—Licence may be forfeited for first conviction—Landlord may eject disorderly persons—Or call a constable—Constable bound to act.

THE first thing to be done by anyone who has obtained a licence or a transfer of a licence into his name is to **put his name up outside** on a conspicuous part of the premises. The licensing justices of every district have the power to direct the exact form of words to be used by a licence-holder. They have also power to say in what manner the notice shall be put up. For example, they may require every licence-holder to put up a board with a black ground and the notice painted thereon in white letters. As to the substance of what is to be put up, this must include the name of the licence-holder, with the word “licensed” and other words sufficient, in the opinion of the justices, to express the business for which he is licensed. Thus the justices may require him to have up the words, “Licensed for the sale of wine, beer and spirits,” but he must also add whether his licence is one permitting consumption on the premises or off the premises. It is an offence to put anything up on your premises implying that you are authorised to sell some kind of intoxicating liquor which you are not in fact authorised to sell. Moreover, if the licence is a six-day licence or an early-closing licence, the notice must state the fact clearly.

Anybody who acts in contravention of this law is liable to a penalty of £10 for the first offence, and £20 for any offence afterwards. It should be noted that if you put up a wrong notice and are fined once, that does not end the matter. It is a continuing offence not to put up a proper notice.

As a rule, the licensing justices, if they find a licence-holder with a notice which they consider not proper, cause him to be notified by the police ;

and also cause him to be notified what sort of notice he ought to put up. In some districts the licensing justices have proper forms of words prepared, a copy of which they hand to all persons to whom new licences are granted.

THE CONDUCT OF A LICENSED HOUSE is a matter dealt with by very stringent legislation. It is most important that the holder of a licence shall conduct his business according to law; for if he does not do so he renders himself liable not only to pecuniary penalties and in some cases to imprisonment, but he also renders himself liable to the forfeiture of his licence in certain cases.

I have in a previous place told you that it is **illegal to sell liquor without a licence**. Now this offence is committed, not only by a person selling liquor when he has no liquor licence at all, but also by a person who, having a licence to sell one kind of liquor, sells another for which he is not licensed—as if a man holding a beer licence should sell spirits, or a man holding only a wine licence should sell spirits or beer. It is also committed by a person who has an off-licence selling liquor to be consumed on the premises; and it may also be committed by a person who has a licence selling liquor on some premises other than those to which his licence extends. Not only does such a sale render the person implicated liable to the penalties previously alluded to (p. 1388), but if he is a licence-holder he is liable to something in addition. For the second or any subsequent offence under this head he *forfeits any licence* he may hold.

And such forfeiture is not a matter of discretion for the Court which convicts him. It is not merely a matter of endorsement on his licence. The Court convicting him of a second or subsequent offence for selling without a licence *must* forfeit the licence held by the offender.

There are also very heavy penalties attaching to the **evasion by an off-licence holder of the conditions** of his licence. I mean more particularly the condition that says that he must not sell liquor for consumption on the premises. If any purchaser buys liquor from a man who holds an off-licence and drinks the liquor (1) on the premises where the same is sold, or (2) on any highway adjoining or near such premises, the licence-holder is liable to penalties. For the first offence he may be fined £10, and for any subsequent offence £20.

For the purpose of this section of the Act, “premises where the same is sold” are to include any premises adjoining or near those where the liquor is sold, provided they belong to the seller of the liquor, or are under his control or used by his permission.

Let us examine this section carefully. You note, in the first place, that the premises on which liquor is drunk must be premises in respect of which no on-licence exists. Of course, if there is no licence at all in respect of such premises, then the seller is liable for selling without a licence and is subject to much heavier penalties. So it comes to this—that the liquor must be sold on premises where there is only an off-licence. In the next place, the liquor must be drunk on those premises, or on someone else's

adjoining or near and under the seller's control; but the offence is still committed if liquor is drunk on a highway near the licensed premises. It should, however, be added—and this is the important point—that **the drinking must take place with the privity or consent** of the off-licence holder.

It is not enough for the prosecution to prove merely that the off-licence holder knew that the liquor was drunk on the neighbouring premises or on the highway. Knowledge by itself is not so privity. As to cases where the liquor is drunk on the highway near the premises of the licence-holder, the sort of case is this: A man comes into a shop which has an off-licence for the sale of beer, and asks for a bottle of beer. Then he asks for a glass. Now if the seller of the beer is foolish enough to give a man a glass, though he may say to him, "You must not drink here," he would probably be held the consenting party if the customer went outside into the street and there poured out and drank the beer. He would most likely be held a consenting party even if he only lent the man a corkscrew to draw the cork.

As to **drinking on adjoining or neighbouring premises** with the landlord's privity or consent, it is obvious that this offence can only be committed when the premises in question are in some way under the legal control of the landlord. For it would not do to say that the landlord consented to drinking which he could not prevent. Suppose the licence-holder has, three doors away from his shop, a barn or stable, into which somebody who bought beer at the shop goes to drink that beer. The licence-holder would run very great risk of conviction in such a case, because, the stable or barn being his, he must be taken (unless he can prove otherwise) to have permitted the drinking there. But if the stable does not belong to the licence-holder, and he has himself no right there, he cannot be convicted of consenting to drinking there.

Cases have arisen where *the person who purchased the liquor was not the one who drank it*; and questions have arisen whether the landlord of the licensed premises was liable under such circumstances. Thus: Stones comes into a shop that has a beer off-licence, and there purchases a bottle of beer. He takes it outside to Jones, who is standing on the pavement. Jones promptly knocks the neck off the bottle and refreshes himself. Assuming this to have been done with the consent of the landlord, can he be convicted under this section? For, you see, the law is that the person who buys the beer must be the same person as he who "drinks it on the premises or highway" in question. Now clearly in this case Stones is the person who came into the shop for the beer, but was not the person who drank it. But it does not follow that he was not the purchaser. As I have told you before, if I send somebody into a shop with my money to buy something for me, I am the purchaser, the messenger is not. And the whole question will turn upon the fact whether Stones was really the messenger of Jones who went in to buy the beer for Jones, or whether Stones was the actual purchaser of the beer, who gave it to Jones of his own free-will and accord. If Stones was merely a messenger, then the

offence has been committed ; if he was not a messenger, then no offence has been committed.

There is another section of the Licensing Act, 1872, which deals with the evasion of the law as to drinking on premises contrary to the licence. It deals with the case of a **man with an off-licence sending out liquor to be drunk on other premises** belonging to him or to any other place over which he has some control, **or in the street.** This, you see, differs from the preceding case, in that in the preceding case the purchaser of the liquor comes to the licensed premises and there buys drink and consumes it in an unlawful place, while in the case we are now dealing with the off-licence holder takes the liquor out. The question is, Where does he take it to, and for what purpose?

Well, if he takes it to any other premises, whether a building, tent, shed or house, which belongs to him, or is hired, used, or occupied by him, intending that the liquor shall be drunk there, he is guilty of an offence. Again, if he takes it to some place not a building—as to a field or yard, or even into a public thoroughfare—intending that it shall be consumed there, he is guilty of an offence. An off-licence would be a mere pretext otherwise. There would be nothing to prevent the off-licence holder from taking another house a few doors away, or setting up a shed, or keeping a field to which he would take or send liquor for consumption by customers.

The Court which hears the complaint against the licence-holder under this section has a very wide discretion. The prosecution need not prove strictly in law that the place where the liquor was taken to be consumed was legally in the possession or occupation or ownership of the accused. If the Bench is satisfied that the liquor was taken by the off-licence holder to this place, to be consumed there, with intent to evade the condition of the licence, then the Bench must convict. If it were not so, there would be nothing in the world to prevent a person in league with an off-licence holder from setting up close at hand a house to which the off-licence holder could send liquor to be consumed there. It would be impossible to prove that this place was in the possession or occupation of the accused, because in answer to that a tenancy agreement would doubtless be produced showing that the tenancy was granted to the other person. It is, therefore, enough for the prosecution to prove that liquor is sent more or less systematically to any house, there to be consumed.

Perhaps I need hardly say that it is not necessary, to constitute this offence, for the off-licence holder to take the liquor himself to the place where it is to be consumed. It is all the same if he employs or suffers any other person to take it for the purpose of being sold on his account or for his benefit or profit. In all cases under this section **the liquor must have been sold for the profit of the licensed person ;** and he must have known the premises to which it was going and that it was to be consumed there. I should say that the consumption on the other premises must be for the benefit of the off-licence holder, by virtue of some arrangement or agreement.

The penalty for the offence last described is £10 for the first offence, and £20 for any subsequent offence. It is also open for the Court which convicts to record this offence on the licence of the offender.

The next offence is more serious; because, in addition to the pecuniary penalty for it, any licence-holder found guilty forfeits his licence. It is not even optional for the justices who convict him to declare that his licence shall not be forfeited. The mere conviction brings the licence to a summary end.

The offence is that of making or using an **internal communication between licensed premises and any unlicensed premises** which are used for public entertainment or as a refreshment-house. The offence also extends to using an internal communication of this kind, and even to allowing it to be made or to be used. An internal communication is here used as distinct from the kind of communication which always exists between adjoining premises. For instance, if I live next door to a field, and my means of access from the field to my house is by going out of my front door into the road and then through a gate into the field, that is an external communication; but if I make a door in the side of my house leading direct into the field, that is an internal communication. The obvious kind of internal communication is where two houses are next door to one another, and some door or passage is constructed whereby people can get from the one house to the other without going into the street. But on looking at the words used by me in the preceding paragraph, you will see that the internal communication that is forbidden need not be between the unlicensed *house* and another *house*—it may be between the licensed house and any *place* of public entertainment or resort. Take the case I put about making a door to open from my house into an adjoining field. Suppose that field is a cricket field, or a recreation ground, or a racecourse; these being all places of public resort, I am guilty of making an internal communication between my house and a place of public resort.

It was once held that when a licensed house was next door to a private house where there was going to be an auction, and an internal communication was made between the private house and the public-house, that the licence-holder had been guilty of this offence and had forfeited his licence.

Not only is the owner of the premises liable to a fine of £10 for every day during which the communication remains open, but every other person who is a participator in the offence is liable. Suppose, that is, you have a communication surreptitiously opened between a public-house and a hall next door. The public-house belongs to Brown, and the hall to Smith. Smith is liable to a fine of £10 a day so long as the communication remains open, as well as Brown.

I now come to the offence of the **illicit storing of liquor**. A licence-holder on whose premises is found any liquor of a kind which he is not authorised to sell, is liable to forfeit that liquor. He is also liable to forfeit the vessels containing it. And he is further liable to a fine of £10 for the first offence, and £20 for any subsequent offence. It may be that the licence-

holder is able satisfactorily to account for the possession of such liquor. That is to say, he may be able to satisfy the magistrates that he did not keep this liquor for sale to, or consumption by, his customers, but for his own private use. For instance, there is nothing to prevent a man who has a beer licence from having on the licensed premises a keg of whiskey, provided he is ready to take the risk of being able to prove that the whiskey is kept only for his own private use and the use of his family and friends, and that he never sells any, either directly or indirectly. By indirectly I mean such a subterfuge as I once saw practised. I was once at a small country inn which had nothing but a beer licence. I was a gay young student then, and I was touring the country with a friend, a Scotsman. Now the Scotsman had no stomach for beer. He wanted a little usquebaugh. And, before long, he found out from mine host that there was whiskey on the premises. My friend began to call for water with his meals, and the water was brought in by the landlord in a glass. It was water, not of the usual kind, but with a taste, and a smell, and a colour. And when the bill was presented my beer was charged for separately, but my friend's "water" was charged for with his food. He was mulcted in the sum of 3s. for lunch, against my 2s. 6d., and 4s. against my 3s. 6d. for dinner. I need hardly say that if the jolly landlord had been caught at it he would have been fined for having liquor on his premises of a kind he was not authorised to sell, as well as for selling spirits without a licence.

I ought to say that there is a **special penalty attaching to holders of wine licences** who have in their possession any spirits. The law is pretty strict. If a person licensed to sell wine has in his possession any spirits in any cellar, room, or place where he keeps, or stores, or retails wine, he is liable to a penalty of £50. The spirits are to be forfeited; and if the wine licence-holder is convicted of having the spirits in his possession, or of selling or retailing spirits, the wine licence is to be null and void. You see, the wine retailer is not even to be given the chance of explaining away the presence of the spirits on his premises. It is quite enough to convict him if the spirits are found in a room used by him in connection with his wine trade. If such a person wishes to keep a keg of spirits for his own private consumption, he must take care to keep it in a part of his premises where he does not keep any wine, or store any wine, or retail any wine.

Perhaps the most difficult part of the duty of a licence-holder is that of **preventing drunkenness on his premises**. It is clearly the duty of every publican (in which term I include all off-licence holders) not to permit drunkenness, or any violent, quarrelsome, or riotous conduct to take place on his premises. I wish you to understand that this is quite a different offence from that of serving a drunken person.

A licence-holder may be convicted of permitting drunkenness on his premises, even where the person who was drunk was not served with drink, and did not consume one single drop of liquor on those premises. If you allow a drunken man to come on to your licensed premises, you are guilty of the offence which the statute forbids. It is not enough for you to say merely that you will not serve him when he asks for liquor. You must

do more than that. You must request him to take his leave. And if he does not take his leave you are entitled to put him out, using no more force than is necessary, because he is a person whose presence on your premises would endanger your licence and subject you to a penalty. It is the same with regard to violent, quarrelsome, or riotous conduct. You must not allow it to take place in your house. You are responsible for order in your house, and if any quarrel is taking place there you must quell the disturbance yourself or call in the assistance of the police to do so.

Of course, a licence-holder *cannot be convicted under this head unless he permits* the drunkenness or violent conduct. It is not enough merely to show that a drunken person was found on the premises; it ought, in addition, to be shown that the licence-holder knew that the person was there. There must be evidence to show that the publican himself knew that a drunken person was on his premises.

The offence of selling liquor to a drunken person is a different offence, though it is punishable in the same way as the last, namely, by a fine of £10 for the first offence, and £20 for any offence after the first, with a probability that the justices will order the conviction to be endorsed on the licence. The law is that a licensed person shall not sell any intoxicating liquor to any drunken person. You see, this is quite different from the preceding offence. The preceding offence is one of permitting something. Now the word "permit" implied that the person who permits has knowledge. If I do not know about something, I cannot be said to permit that something to happen or to continue. Therefore, if there is a man in my house, and either I do not know he is there or I do not know he is drunk, I cannot be said to permit drunkenness on my premises. But with regard to the sale to a drunken person, the law stands on an entirely different footing. The prohibition is an absolute one.

It is **no defence** for a publican charged with this offence to say that he did not know the man to be drunk. There was a case where a publican was charged with serving a drunken man. He set up in his defence that both he and his potman thought the man was not drunk. As a matter of fact, I believe, the customer was propped up against the bar, and immediately he let go that support he fell down. The landlord of the public-house was quite sincere when he said he did not know the man to be drunk; but the justices said that was not the point: the point was whether the customer was in fact drunk. The publican appealed; but the High Court took exactly the same view as the magistrates had done. In fact, they rubbed the salt in by saying that the publican must take the risk of whether a man is drunk or not. In fact, it comes to this—that if a man is "three sheets in the wind," though there might be a difference of opinion as to whether he was drunk or not, it is much better not to serve him at all.

I know there are some publicans who imagine that so long as a man is not drunk they are bound to go on serving him so long as he has money to pay and so long as he behaves himself. This is quite erroneous. There is nothing in the world to compel a publican to serve anybody, unless the

customer is a traveller and the public-house is an inn. Even then the customer can only call for some refreshment—not as much as he chooses to pay for.

One of the most serious questions that has arisen under the Licensing Acts is, how far **the publican is liable for the acts of a manager or servant** who serves a drunken man. It is quite certain that a servant, or wife, or manager is not liable to be convicted for serving a drunken man. They may be convicted, perhaps, under another Act, as aiders and abettors of the offence; but there the consequences are not quite so serious. The question for the licence-holder is not whether the servant, wife, or manager is personally responsible, but whether he, the publican, is liable for their acts.

It has been held, after considerable doubt, that in this respect the licence-holder stands in just the same position as he would in any other respect. That is to say, he is liable for whatever may be done by his servants or agents where they act within the scope of their employment. In a preceding part of this book (*see* p. 532) I have explained what is meant by "the scope of a servant's employment." In a sense, of course, it is never within the scope of any servant's employment to do a criminal act, or a wrong act of any sort. I mean to say, that you could not lawfully employ a servant or agent to do an unlawful thing. But when I say that the licence-holder is responsible for the acts of his servants and agents within the scope of their employment and authority, I mean that if he employs a person to serve at his bar or in his tap-room, that person is acting within the scope of his employment when he serves liquor to anybody. If a publican employs a groom who is not authorised and has never been allowed to serve anybody with liquor, and that groom takes it upon himself, on some occasion when his master is absent, to serve somebody with drink, the master would not be liable if the person served was a drunken man. But in the ordinary case of the barmaid, or the potman, or the manager, the holder of the licence is responsible for these persons serving drunken people with liquor.

To show you that it does not make much difference to the licence-holder's liability for a drunken man being served on his premises, whether the man was served by the publican or his servant, let me tell you of a case which actually happened. The case will also be instructive as proving that even where a publican gives **general instructions to his servants** not to serve people who are drunk, and the servants disobey those instructions, the publican is liable all the same. That is, in fact, the general rule. Thus an omnibus company issues general instructions to its drivers not to race with the 'buses of other companies. Yet one of the company's drivers did race, contrary to orders, and whirled his omnibus about so violently as to throw a passenger off the upper deck; and the omnibus company had to pay the damage. General instructions seem to make no difference to the liability of a master for the act of his servants.

A man named Carter had a public-house in London. It was a large

house with two or three bars—or, rather, a bar divided into several compartments. One night, at a quarter to twelve, a man named Evans walked up to the door of the public-house and made to go in. There was a police-constable just outside, and he said to the doorkeeper, "Don't you see that man is drunk?" But Evans had slipped in somehow; and the doorkeeper, who ought never to have allowed him to enter, tried to repair his mistake by speaking to the barman, and asking him not to serve the customer.

But the barman took no notice of this request. The consequence was that when the drunken man called for a glass of beer he was immediately served. The doorkeeper, however, took the glass away, and handed it back to the barman, remonstrating with him on his conduct. Nevertheless, the barman handed the glass back to the customer.

A summons was taken out against the landlord for selling liquor to a drunken man. The landlord was able to prove fully that he had given proper instructions to the doorkeeper as well as to the barman, with a view of keeping out drunken people and also with a view of forbidding the sale of liquor to persons who were drunk. And Mr. Carter asked, with some point, What in the world more could he do? It was not to be expected that he should be here, there, and everywhere, and personally supervise the serving of every customer in every part of his house.

The case ultimately went to the Court of Queen's Bench, where it was heard by the late Lord Chief Justice of England and Mr. Justice Wright. The Chief Justice, with his great knack of getting at the heart of a question, laid it down that the first consideration was Public Order. The object of the section of the Licensing Act was to prevent the sale of liquor to drunken persons. Now liquor could only be purchased from persons who were licensed to sell it; and it was understood that licensed persons, as a rule, carried on their business by the hand of their servants. The publican, as a rule, only gave a personal supervision. It was obvious, therefore, that if the Act were to be enforced as though the publican were only to be liable when he personally took part in the sale to a drunken man the Act would be of very little use. Take the case of a sporting publican. There are many such men who attend race meetings up and down the country almost every day in the week. Was it to be said that on the premises of these persons liquor could be served, in the absence of the publican himself, to drunken persons without any unpleasant consequences to the publican? Moreover, this section of the Act said nothing about knowledge on the publican's part. Therefore, if you found that in the ordinary way of business liquor was sold by a publican's servant to drunken persons the publican must be held responsible.

It does not follow that the master is liable for everything that may be done by his servants; for instance, he is not liable if his servant permits gaming on the premises without his knowledge or consent. But, you see, the gaming is not in the ordinary way of a publican's business, as the sale of liquor over the bar counter is. And again, you must draw a **distinction between a manager and a mere servant**. I think it will be found in every

case that where an offence is committed against the Licensing Acts by a manager to whom a certain amount of control over the business is delegated, it must be taken as though it had been done by the licensed person himself. But, excepting the case of selling liquor to a drunken person, something done by a mere servant in the position of barman or barmaid is not to be taken to have been done by the publican himself. Thus, if the sporting publican aforesaid leaves his house to be managed by his wife while he goes away to Epsom, to Doncaster, and to Newmarket, and while he is away his wife permits gambling to take place on the premises, it must be taken as though the publican himself had done it. At least, that is my reading of the decisions that have been given by judges on these points.

A rather curious point with reference to serving drunken persons arose in a case which came from Northwich, in Cheshire. It resolves into the point, **Can you serve a sober man for the benefit of a drunken man?** The case has arisen in Scotland also, and I daresay it arises very often up and down the country. It arose in a public-house called The Eagle and Child, where one day two men named Snelson and Hayes put in an appearance. Hayes was very drunk and Snelson was sober. Snelson appears to have been one of those foolish people, free with his money, but a little mistaken in his opinions of kindness. For notwithstanding the fact that his companion was drunk, he asked him what he would take. Hayes mumbled out the word "Rum"; whereupon Snelson called for a glass of rum for his mate and a glass of beer for himself. The person behind the counter drew the beer and placed it before Snelson, and poured out the rum and set it before Hayes. The sober man paid for both.

But a policeman intervened; and the landlord of The Eagle and Child found himself before the magistrates on a charge of selling liquor to a drunken person, in breach of the Licensing Act. The landlord's defence was that he never sold the liquor to Hayes; that he sold it to Snelson, who was quite sober at the time, and that the Act said nothing about who was to drink the liquor, but only about the person to whom it was to be sold. The justices of those parts therefore came to the conclusion that if the landlord's defence was right publicans would be able to drive a coach-and-six through the Licensing Act, and at full gallop, too. They therefore decided to convict the worthy publican, but stated a case on the point of law for the High Court, so that if the landlord were legally in the right he might have the benefit of the law. But the judges of the Queen's Bench were not a whit more sympathetic than the justices of Cheshire. They pointed out that though it was no doubt true that in the strict sense of the word the sale was to the sober man and not to the drunken man, yet the Licensing Act construed the word "sale" in a rather wide manner. For by section 62 of the Licensing Act, 1872, it is enacted:

"In proving the sale of intoxicating liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed or that any intoxicating

"liquor was actually consumed if the Court hearing the case be
"satisfied that a transaction in the nature of a sale actually took place."

This is rather sweeping; quite enough, at all events, to sweep the landlord of The Eagle and Child into the net of the law. He was therefore convicted; and his fate should be a warning to all publicans and hotel keepers that it is not safe, when a sober man and a drunken man come into the place together, to serve the sober man with liquor unless you are satisfied that it is for his own consumption alone.

I have said previously that if a manager does anything that ought not to be done by a licensed person, or permits things that ought not to be permitted by a licensed person, or if the servant of a licensed person serves liquor to a drunken man, the licensed person may be convicted for the offence. And I said that it made no difference whether he personally knew about it or not. Perhaps my statement was a little too wide. I meant really that it made no difference from the point of view of his innocence or guilt in law. In fact, it may make a very great deal of difference to him. The penalties for permitting drunkenness or violent conduct and for selling liquor to drunken persons are £10 for the first offence and £20 for any subsequent offence. Moreover, any offence under this section may be ordered to be recorded on the licence.

But it is always open to the offender to give **evidence in mitigation of his punishment.** And if I were a publican whose barman had sold drink to a drunken man against my express orders, I should, when summoned, first of all find out whether the crime had actually been committed. If it had, and I was satisfied that I must be convicted, I should adopt the course of pleading guilty to the charge and asking the magistrates to listen to evidence in mitigation of sentence. I should then go into the witness-box and on oath swear that I had given strict orders that no drunken person was to be served. Further, that I was somewhere else—not within seeing distance of the place where the drunken man was served; that I had always done my best to obey the law and conduct my house on respectable lines; that I had reprimanded or dismissed the barman who had disobeyed my orders by serving the drunken man. In such circumstances the justices would, no doubt, make the fine a small one, and would not endorse the conviction on the licence.

The offence now about to be dealt with is one which magistrates regard, and doubtless rightly regard, as a very serious matter indeed. The 14th section of the Licensing Act, 1872, is one dealing with it, and I set it out in full.

"If any licensed person knowingly **permits his premises to be the habitual resort of or place of meeting of reputed prostitutes,** whether the object of their so meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining refreshment, be liable to a penalty not exceeding for the first offence £10, and not exceeding for the second and any subsequent offence £20."

The first thing to be noticed here is the word "knowingly," which, taken together with the word "permits," shows that **guilty knowledge** is the essence of the offence. Moreover, it is not good enough for the police or other person prosecuting merely to prove that the objectionable persons did in fact frequent the licensed house—they must prove that the licence-holder knowingly permitted it. It is enough if a manager knowingly permitted it; but not if the person "knowingly permitting" was a mere servant who had no particular authority or control over the premises.

And the prosecution must also prove that the publican or his manager knew of the character—or, rather, reputation—of the objectionable persons. It is not enough for a policeman to go into the box and say that he found on the licensed premises, the landlord being present, three women of reputed bad character. He must give some sort of reason, some sort of facts, showing upon what facts this bad reputation is founded. And if he merely says, as he frequently does, that it is his belief, then you are entitled to ask him what are the reasons for his belief. Be careful to note that the prosecution need only prove that the persons in question are *reputed* to be what it is said they are. Whether they are actually any better or worse than their neighbours is a matter that would be almost impossible to determine.

You will also notice, I daresay, in the Act the word *habitual*. The prosecution must prove that the licensed premises are the habitual resort of those unfortunate creatures. Therefore the mere fact that one of them has been seen there is not enough. It has been held, however, that when a policeman was able to say he had seen two of them go in one after the other at different times on the same night, it was some evidence from which the magistrates might draw the conclusion that the public-house was an habitual resort.

Further, you should remember that even these abandoned persons have some sort of right to use licensed premises. Nothing can befall a publican **who simply serves them with drink or other refreshment**. What he must not do is to allow them to loiter about; for the offence consists in letting them use his premises for some purpose other than that of obtaining refreshment. I believe that in law it would be possible to convict a publican of an offence under this section who allowed—I mean habitually allowed—these unfortunate beings to take shelter in his house when it rained heavily. And this although he did not permit them while on his premises to come into contact with any other persons. They may remain on the licensed premises not longer than is sufficient for the purpose of obtaining and consuming refreshments.

There was a case which illustrates the trouble a licence-holder may get into by so much as having one of those creatures on his premises at all. A woman who kept a public-house somewhere in Worcestershire was the person who had to bear the brunt of an attack by the police. One day a policeman suddenly entered the bar. At the same moment the landlady entered on the other side of the counter. There was, in the bar, a woman

who was admitted to be of the unfortunate class. At the moment the constable entered this woman was not drinking or otherwise taking refreshment. The landlady looked at her and said, "Out you go." The poor woman immediately went. Then the police-constable took out a summons against the landlady of the house. I suppose something of the same kind must have occurred before; because the mere fact of one woman being seen there once could not possibly be an habitual use of the premises. But the landlady defended herself stoutly; and said, first of all, it could not be proved that she knew the woman was there; and, secondly, that for anything the police-constable had seen the woman might have had a glass and have just finished it. And, of course, it is not the law that when one of these women drinks in a public-house she should, as soon as she has swallowed the liquor, put down her glass and run out.

The landlady of this public-house escaped in the end, after an appeal to the High Court. And the moral of the case is that it is incumbent on the police to prove that the person objected to was in the public-house longer than was sufficient and necessary for her to take refreshments.

The penalty for the offence is a £10 fine for the first offence, and £20 for any offence afterwards. The convicting magistrate may order the conviction to be recorded on the licence.

Similar in character to, though far more serious in its consequences than, the offence of allowing women of ill-fame to frequent the house is that of **permitting licensed premises to be used as a brothel**. The subject is an unsavoury one, and will not be treated of at length, because the offence is of the rarest. I may say, in passing, that anybody who keeps a brothel, licensed person or otherwise, is liable to be indicted at Common Law. A room where a woman lives and carries on the trade of a harlot, if she suffers no other woman to come there for the same purpose, is not a brothel.

On the one hand, a person cannot be convicted of this offence merely because someone has used his house for an improper purpose—if so, few hotels would go free, I fear. The licensee must be proved to have permitted the use of his premises, which implies, of necessity, that he knew what was being done. On the other hand, the prosecution are not called upon to prove that the house is a nuisance to the neighbourhood, or that there are any outward signs of indecency about it.

Conviction of the licence-holder involves immediate **forfeiture of the licence**. The convicting tribunal cannot say anything in the matter; for the forfeiture follows the conviction instantaneously as a matter of law. If the licence-holder thinks he has been unjustly convicted, he should ask for a temporary grant to himself or somebody else, and then appeal to Quarter Sessions. The fine is £20. But even this is not quite the worst, for the offender is **for ever after disqualified** from holding any licence whatever for the sale of intoxicating liquors.

Akin to the offences alluded to on the last two or three pages is an offence not dealt with by the Licensing Acts, but by the Prevention of Crimes Act. It is an offence severely punishable—in fact, on the very first conviction the

licence of the offender is forfeited. It is not merely that the licence is endorsed, or that the justices convicting have any power in the matter. The licence simply becomes void from the moment of the conviction.

The offence is that of **lodging or harbouring thieves or reputed thieves**. It also extends to permitting or suffering such persons to meet or assemble on the licensed premises, and to the offence of allowing them to deposit on the premises goods which the licensee has reasonable cause for believing to be stolen goods.

In addition to the forfeiture of the licence, the person found guilty may be fined up to £10, and if he does not pay may be imprisoned for four months. And in addition to fine or imprisonment the offender may be bound over to be of good behaviour for not more than twelve months. If he is sentenced he must find sureties to enter into what is called a recognisance for his good behaviour; and if he cannot find anybody who will go bail for him, he may be imprisoned for a period not exceeding three months.

There was once a very curious case where a person of the name of Marshall, who had an ale-house in London, permitted to be held on his premises what is called a "**friendly lead**." There is, you know, a certain amount of comradeship among thieves. And it is not an uncommon thing, when a well-known thief who is popular with the fraternity is caught and sent for trial, for his friends in the same line of business to get up a subscription to provide him with means for defence. Their generosity also extends, sometimes, to a subscription for the support of their fellow-craftsman's wife and family during such time as the law is taking care of the breadwinner. The most usual way of raising money is for the most intimate or influential friends of the prisoner to send round an invitation to divers other members of the community to meet at some public-house on a particular night, and there to hold a little entertainment. The persons invited generally put in an appearance, consume a considerable amount of liquor, smoke an enormous amount of bad tobacco, and sing a great many songs of a character quite indescribable. When their hearts are warmed by these exercises, the chairman rises in his place and delivers an eloquent address on the many virtues and graces of their unfortunate friend now in durance vile. And by way of peroration he announces that he, the chairman, will contribute "half-a-dollar," or possibly more. And he calls upon the whole company to put its hand in its pocket—its own pocket, for once. In this kind of way a very tolerable sum is sometimes raised; and out of it the beneficiary is able to hand over the railings of the Old Bailey Dock a guinea to some deserving young counsel who is asked to undertake the defence.

The Mr. Marshall before alluded to lent his house, or rather a room therein, for a "**friendly lead**" one night on behalf of a gentleman in trouble. When the police entered the premises they found sitting round a table, drinking and singing songs, quite a large company. And amongst them were several thieves or reputed thieves—men who had been convicted time and time again. And it was found, as a matter of fact, that Mr. Marshall, the publican, knew these gentlemen perfectly well—who and what they were.

A summons for harbouring thieves or reputed thieves was promptly served on Mr. Marshall. He was convicted by a metropolitan magistrate, and had the hardihood to appeal to the High Court on the ground that the "friendly lead" was not a disorderly gathering; and that the reputed thieves had not assembled there in order to concert crime or in order to carry on their vocation. The High Court made very short work of it. They said that clearly amongst the company were reputed thieves. Clearly they had assembled and met in the house of Marshall. Clearly also they met not casually, but by invitation and by preconcerted arrangement. That was enough. But they said, if there had been merely an accidental or casual meeting of a few thieves in a public-house, the landlord would not have been liable under the Act.

I have already told you that when a man is convicted of this offence his licence goes. But if it is his first offence, there is nothing to prevent him from getting another licence. Suppose he does get another and is convicted again, of course his licence goes again; and he has the additional punishment of being disqualified for two years from holding any other liquor licence. There is a further **penalty attaching to premises** which may have become the habitual **resort of reputed thieves**. If two offences are proved within three years in the same premises, whether they be committed during the tenancy of the same person or during the tenancy of a different person, the house itself becomes disqualified from being licensed for one year.

The next offence that a licensed person must refrain from committing is quite different from the last. The Prevention of Offences Act says you must not harbour thieves. The Licensing Act says that **neither must you harbour constables**. It is not that constables may meet there for mischief, but that if a constable gets into the habit of running into public-houses and drinking when he is on duty the public peace is likely to suffer. Therefore it is enacted that a licensed person "shall not knowingly harbour on his premises any constable during any part of the time appointed for such constable being on duty." Neither shall he "knowingly suffer to remain on his premises any constable" during such time.

It is a further offence **to supply any liquor or refreshment**, whether by way of gift or sale, to any constable on duty unless by authority of some superior officer of the constable.

Now you will easily see the difference between these two offences. In the case of harbouring a constable the word "knowingly" is used. This must mean that the licensed person charged with the offence not only knows that the constable is on his premises, but knows that the constable is on duty. And it is for the prosecution to prove that the publican knew the policeman to be on duty at the time he allowed him on his premises. *Prima facie* evidence that the constable was on duty is to be found in the fact that he was in uniform. And as a rule, if a constable is found in uniform on licensed premises it must be taken that the landlord knew that he was on duty. Of course, the publican may be able to prove that he

inquired of the constable, and that the latter told him he had just come off duty and was on his way home, or something of that kind.

But when it comes to the offence of serving a constable who is on duty, the word "knowingly" is not used in the Act. And it used to be thought by lawyers that if a publican served a constable when that constable was on duty, however innocent the publican might be, an offence had been committed. Thus, if a constable went into a public-house and sat down there but did not ask to be served with drink, and the publican asked him whether he was on duty or not and the man said "No," the publican could not be convicted of knowingly harbouring the constable; but if that same constable asked for a glass of beer, and was served after inquiry had been made whether he was on duty or not, the publican took the risk of committing an offence. In other words, if it should turn out that the policeman was on duty at the time, though he said he was not, the landlord would be convicted of a crime notwithstanding his moral innocence.

But this opinion of the legal profession has had to be considerably modified since the well-known *Armlet Case*, which was as follows: A man named Sherras had a public-house in London opposite a police-station. This public-house was used a great deal by the police when they were off duty.

One day a certain policeman who was on duty and in uniform felt particularly thirsty. Therefore he went across to Sherras's for some beer; but before going in he took off his armlet—and, as Londoners know, the armlet worn on the coat is a sign that Robert is on duty. When this particular policeman, therefore, entered the public-house without his armlet, Miss Sherras, who was behind the bar, naturally concluded that he had come off duty. She had no reason to suspect him of treachery, because he had been a customer of the house for a long time. She looked at his coat-sleeve, saw the armlet was absent, asked no questions, and drew the desired beer.

Sherras found himself summoned for having supplied a police-constable while he was on duty. It was, of course, a very hard case, because the publican had been completely deceived. The sympathies of the judges were with him on that account. And I question very much whether their sympathies did not lead them to deviate from the strict and proper interpretation of the law. However, they decided in favour of the publican; and until their decision is overturned it must be taken to be the law of England. They said that the section which deals with serving liquor to a constable on duty simply means that the publican must take proper and reasonable precautions to satisfy himself that the constable is not on duty. If he takes such precautions he is not guilty of an offence under the section, although it may turn out that the constable was on duty. Here, said the judges, Sherras believed, and had good reason to believe, that the constable was off duty. Therefore, having a reasonable belief, he could not be convicted of "serving liquor to any constable on duty." As I have said before, I question very much whether this is really the proper interpretation of the Act. If I were a publican I should be very chary about serving a policeman who was in uniform, armlet or no armlet.

Another offence under the same section is that of bribing or attempting to bribe any constable.

The penalty for committing any of these offences in relation to the police force—that is, of harbouring, serving, or bribing a constable—is a fine of £10 for the first offence and £20 for any offence afterwards. These are the maxima. In addition, the convicting tribunal may order the conviction to be recorded on the licence.

The next thing I wish to draw the attention of licensed victuallers to is the section of the Licensing Act dealing with the **permitting of gaming on the premises**. There are three distinct offences:

1. Suffering any *gaming* to be carried on on the premises.
2. Suffering any *unlawful game* to be carried on on the premises.
3. The opening, keeping, or using a house, or suffering it to be opened, kept, or used, in *contravention of the Betting Act, 1853*.

I will deal with these in their order. The uninitiated might imagine that numbers one and two are the same thing. It is not so, I assure you. Gaming means playing any game for money. And it makes no difference in the world whether the game is a lawful game or an unlawful game. Thus an ale-house keeper in whose licence a permission to keep a billiard-table is included is guilty of "suffering gaming" on his premises if he permits people to play at billiards for money. Again, if a licence-holder allows people to play at whist in his house for money he is guilty of the same offence. I have no doubt that if the area covered by the licence includes a bowling-green attached to the public-house, and the publican allows people to play at bowls for money, he is guilty also. And, of course, there is nothing unlawful in billiards, or bowls, or whist in themselves.

I ought, in this part, to give a **warning to licence-holders**. A licence-holder is not so far removed from the ordinary rights of citizenship that he cannot have his own friends in his house at any time he pleases. If you have an inn or beer-house you can invite friends to see you, and to stop until any hour you like, so long as you do not sell them any liquor after closing time. But one thing you must not do—you must not let them play any game for money. And this prohibition extends over the whole house, so far as it is covered by the licence. Wherefore, if you have a party in your rooms, provided those rooms form part of the licensed premises, you must not allow any of the guests to play at whist for even the smallest money stakes. If you do, you run the risk of being convicted and fined for suffering gaming on your premises.

Now let us examine number two, which deals only with **unlawful games**. By the law of England certain games are unlawful, and are prohibited from being played in a variety of ancient statutes. Gambling has, of course, not gone out, notwithstanding this Act of Parliament; but I believe a great many games struck at have gone out. They are the games of "Ace of Hearts"—whatever that may be—"Faro" (Pharaoh), "Basset," "Hazard," "Passage," games played with a die or dice (except "Backgammon"), "Roulet" or

"Roley Poley." Besides this, there is a compendious Act of Parliament of very ancient date which declares that dice and carding are illegal. Carding means playing with cards. But the general prohibition of card-playing, which was found almost impossible to enforce, has been cut down considerably. It now extends only to games which are not games of mere skill. It was very gravely contended by Sir Charles Russell (afterwards Lord Russell of Killowen) that the game of baccarat was a game of mere skill. And the skill was alleged to be in this—that the player at the game should know when to stop. I have always thought, and am glad to find, that my opinion was confirmed by so eminent an authority as Lord Brampton that baccarat was a game of pure chance. We shall next be hearing that "Head and Tails" is a game of mere skill; and, I suppose, after that someone else will advance the proposition that cutting for aces is a game of mere skill.

The licence-holder must be very careful not to allow any of the games I have mentioned to be played on his premises at all. I emphasise the words *at all*, because I mean that he must not allow these games to be played even when they are not played for stakes. You see, the liability is that the licence-holder must not permit any unlawful games to be played on his premises, and that he must not permit lawful games to be played for money.

The third part of the section deals with the man who **suffers his house to be used, or uses it himself, in contravention of the Betting Act, 1853.** The Betting Act is one that has given rise to a tremendous amount of litigation. It is not very long since all England was laughing at the attempts of the judges to find out what was "a place within the meaning of the Act." The question of what is a place does not make much difference to the licence-holder, for he is generally hit. In other words, the Act says, "No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or *any person using the same*, or any person procured or employed by or acting for the owner, occupier, or keeper, or person using the same betting with *persons resorting thereto.*" The Act also hits anybody who keeps or uses, or allows to be kept or used, his house for the purpose of receiving money or any valuable thing which was the consideration for making a bet.

Let me say at once that what is aimed at by this Act is the using of the house or place in question for the purpose of making bets or receiving the money of the persons who want to bet. **It does not extend** to a place where the bookmaker comes merely to pay bets which he has lost elsewhere. Thus, suppose a bookmaker who attends races and makes bets there chooses to arrange with his customers that he will settle up with them every week at The Pig and Whistle, and accordingly every Saturday night he meets his customers at The Pig and Whistle, and there pays to everybody the money he owes for lost bets, the bookmaker does not come within the meaning of the Act. I should say, perhaps, that the bookmaker cannot be convicted of using The Pig and Whistle for any purpose in contravention of the Act.

The kind of thing hit at by the Gaming Act is the actual making of bets

in the house or place in question. And it does not matter whether these bets are made by word of mouth between the bookmaker and his clerk and the unwise person who bets with him, or whether the bookmaker uses the house or room merely to receive what are known as betting slips. For the benefit of those who do not know what betting slips are, let me say it is customary, especially in cases of small betting by working men and clerks, to send to the bookmaker at his accustomed haunt a bit of paper, bearing the name of the horse and the race, and the amount of the bet. It is accompanied, as a rule, by the money which the customer stakes. Thus in some printing works you will occasionally see a boy come rushing out and darting up to a bloated-looking fellow with a bird's-eye handkerchief round his neck, to which personage the boy hands a bit of paper and a shilling. If you could see that piece of paper you would find it read something like this:

"The Grand National.

"Fofum, 1/-

"W. Smith."

These words and figures mean that W. Smith wishes to stake the sum of one shilling upon the chances of a horse called Fofum, which is about to run in a race called the Grand National. The odds to be taken or given are what is called starting-price. And the piece of paper in question is called the betting slip.

If a bookmaker or professional betting man uses licensed premises as a place where betting slips may be taken to him by his customers, he is using that house for a purpose in contravention of the Betting Act. He is liable to be punished, and the licence-holder is also liable to be punished. But the consequences are more serious to the licence-holder than to the bookmaker, because, in addition to the penalty of £10 for the first offence and £20 for any other, the licence-holder may have his licence endorsed. I ought to say that a person charged with an offence against the Betting Act is liable to imprisonment, and can claim the option of being tried by a jury.

One case of a bet being made in a public-house with the landlord's permission is not enough for the justices to convict the landlord of an offence. But it has been held that where the police can prove **two acts of betting** taking place on the premises, this was evidence upon which the justices might convict the publican of keeping his house or suffering it to be used in contravention of the Betting Act. Do not misunderstand me. The justices are not bound to convict on proof of two acts of betting. It is merely evidence from which they may draw the inference that the house was used for that purpose. Naturally, if a great number of instances, particularly if they are continuous from day to day, can be proved, the inference is very strong.

This was discovered once by a gentleman of the name of Busby, who kept a beer-house called The Royal Pair, at Kensington. The police seemed to have had suspicions that the house was being used in contraven-

tion of the Betting Act. So they kept watch; and this is what they saw: For five days they observed a man named Woods, a professional betting man, enter The Royal Pair at the hour of noon. There he remained until about three o'clock. The bookmaker seemed not to be a beery man, for only once during the five days did he purchase any beer; but once or twice he bought cigars, and on two occasions sent out for a bottle of whiskey, of which he himself partook, the landlord joining him. For the most part Woods used a particular part of the house called the saloon compartment. His customers, knowing that from twelve to three he was to be found there, used to go to meet him and there make bets *viva voce*, or else send betting slips to him. Once or twice he made bets with Busby, the landlord. Spies who entered the saloon compartment on behalf of the police reported that the conversation there was all about horses, betting, odds, and the whole jargon of the bookmakers' fraternity. It was obvious that Woods was known by his customers to be at the beer-house; and obvious that Busby knew what Woods was in the habit of doing there. The bookmaker—so it was proved—had no interest in the public-house. Neither had Busby any interest in the betting business—except in so far as the presence of the bookmaker might attract custom to the beer-house.

The police, as the result of their five days' observation, took out five summonses against Woods for using the bar of the beer-house "for the purpose of betting with persons resorting thereto." They also took out five summonses against Busby for keeping his house or suffering it to be used by Woods for the purpose of betting with persons resorting thereto. It being practically admitted that Busby knew what was going on, the whole question was whether the bookmaker was using the public-house within the meaning of the Act. It was held emphatically that he was so using it, and he was duly convicted and fined. And it became necessary, therefore, for the police magistrate to convict the landlord. This ought to be a warning to licence-holders, showing them what they ought not to do. Let me say at once that not only does a landlord who permits a betting man to come into his house regularly run the risk of a conviction under this Act, but he also runs the risk of having a renewal of his licence refused.

Every licence-holder must be careful to **observe the proper hours of closing**. These are strictly regulated by Act of Parliament. Let me say, to begin with, that time in an Act of Parliament is nowadays always the Greenwich time. It used not to be so. Within my recollection, time meant the mean time at the place where the event happened. There was once a very curious case of this, which I give rather for the amusement of my readers than because it has much bearing on licensing matters. There was a certain judge who was extremely punctual. He once went to the Dorchester Assizes, and there opened the Session, appointing business to begin the next morning at ten o'clock. Accordingly the next morning, at ten o'clock precisely by the clock in the court-house, his lordship took his

seat on the bench and said, "Call the first case." Thrice did the clerk call the first case. Then, no plaintiff being present, the judge said, "Strike it out. Call the next case." The next case was then called, and, the parties being present, it proceeded. Just as the learned counsel for the plaintiff rose to his feet and said, "Gentlemen of the jury," a man rushed in a state of profuse perspiration and intentionally interrupted the proceedings. He said he was the plaintiff in the last case, and he understood his lordship had struck the case out. His lordship blandly assented to this statement, and proceeded to deliver a lecture to the wretched man on the virtues of punctuality. "But, my lordship," the man interrupted, "the town clock had only just begun to strike when I opened the door of this court just now." For answer, the judge sternly pointed to the clock on the wall of the court, whose hands pointed to four minutes past ten. Then the murder was out. The difference between Greenwich time and Dorchester time was one and a half minutes. The court-house clock was set by Greenwich time, and the town-hall clock by Dorchester time. The judge therefore stuck to his guns and refused to allow the case to be set down again; and the consequence was that the wretched plaintiff had to appeal in order to get a new trial. When his case was heard he was able to prove that he was punctual according to the time of the town clock of Dorchester. The other side contended that correct time all over England was Greenwich time. But the judges would not have it. They decided that time means the time of the place where the event happens. As one of them pertinently observed, "There is a difference of several minutes between Greenwich time and the time at Carlisle." And you might, by counting Greenwich time as the proper time at Carlisle, cause a person to be born a day too soon or a day too late, as the case may be.

Nowadays, however, whenever any time is mentioned in any Act of Parliament, it means Greenwich time. I do not mean that sunrise and sunset mean sunrise and sunset at Greenwich. I mean that if an Act of Parliament says a thing is to be done at 11 o'clock in the forenoon, it means 11 o'clock by Greenwich time. Accordingly publicans, whose closing hours are regulated by Act of Parliament, ought to take care to have their clocks set by Greenwich time.

The hours of closing licensed premises vary in different parts of the country. You may conveniently divide the country into three kinds of areas for this purpose, namely:

(1) THE METROPOLITAN DISTRICT, consisting of the City of London and the liberties thereof; also the district within the jurisdiction of the London County Council; and in addition, if there is any area within four miles from Charing Cross which is not comprehended in the London County Council jurisdiction, then that area is also part of the Metropolitan district.

(2) TOWNS AND POPULOUS PLACES. These include, first, the whole of the Metropolitan Police district not comprised in number one. As you know, the jurisdiction of the Metropolitan Police is not coincident with the jurisdiction of the London County Council. A town means an urban sanitary

district (*see* the chapter on Building Regulations). And if there is a town which has any collection of houses just outside its boundaries, the County Council may by resolution declare the area of these houses to be included in the adjacent town. No town, however, though it may be an urban sanitary district, comes within a definition of a town for the purpose of the Licensing Acts if it has a population of less than a thousand. A populous place is an area with a population of not less than a thousand, which has been declared by the licensing committee of the county to be a populous place. There is no compulsion whatever on the licensing committee to declare a village of a thousand inhabitants or more to be a populous place. As far as my experience goes, you will not find many benches of magistrates who are willing to make such a declaration in respect of any village.

(3) Last of all, there are places I would call **RURAL DISTRICTS**, by which I mean places which are not comprised in either (1) or (2) above.

Let us deal with these classes of districts in their order. In (1) the hours are as follow :

From Monday to Friday, inclusive, the house must not be opened before 5 a.m., nor after 12.30 at night. On Saturday the hour for opening is 5 a.m., and the hour for closing 12 midnight. On Sunday the hour for opening is 1 p.m., then the house must close at 3 p.m.; it must remain closed until 6 p.m., and must be finally shut for the day at 11 p.m.

In (2) the hours from Monday to Saturday, inclusive, are 6 a.m. to 11 p.m. On Sunday the hour for opening is 12.30 p.m., when the house can only remain open for two hours (2.30). From 2.30 to 6 the house must be shut, and must be finally closed at 10 o'clock at night.

In (3) the hours from Monday to Saturday, inclusive, are 6 a.m. to 10 p.m., and the hours on Sunday the same as in class (2).

In classes (2) and (3), it is possible for there to be a **variation in the time** of Sunday opening and closing. For the purpose of making the hours conform to the local hours of public worship, the licensing justices have power to proclaim in any area of their district licensed houses shall only be open on Sundays at 1 o'clock instead of 12.30, in which case they will close at 3 o'clock instead of 2.30. If the licensing justices make such an order, they must advertise it so as to give public notice thereof, and the order does not come into effect until one calendar month after it has been made.

Christmas Day and Good Friday are equivalent to Sunday all over England. The hours for opening and closing are the same. The Thursday before Good Friday is the same as a Saturday—that is, in London public-houses must close at 12 o'clock the night before Good Friday. The day before Christmas Day is also equivalent to a Saturday, except, of course, where that day happens to be a Sunday.

IN WALES they have Sunday-closing all round—that is to say, all the licences are practically six-day licences. But in Wales Christmas Day and Good Friday are not equal to Sunday. They are equal to the English Sunday as far as hours of opening and closing are concerned. And the restriction on Sunday opening of licensed premises does not extend to railway stations—that

is, to the supply of refreshments at a railway station to people arriving or departing by the railway.

Night Houses.—It is possible for the licensing justices of another district to exempt any particular public-house or public-houses from the restrictions as to closing. They may, in fact, grant liberty to a publican to keep open the whole twenty-four hours, except between the hours of 1 and 2 in the morning. Licensing justices, however, have only the right and the power to grant such an exemption when evidence is given showing that it is necessary or desirable so to do for the accommodation of a considerable number of persons attending any public market or following any lawful trade or calling. It used to be the law, but it is not now, that public-houses might be exempted for the convenience of their customers. The exemptions can only be given to licensed victuallers, licensed keepers of refreshment-houses, and licensed retailers of beer and cider for consumption on the premises. And the premises to be exempted must be in the immediate neighbourhood of the market or the place where the persons for whose convenience the order is made follow such lawful trade or calling. Most Londoners, I suppose, know that there have been houses in the neighbourhood of Covent Garden Market and of Fleet Street kept open practically all night by virtue of this section of the Act. The licensing justices do not grant these permissions or exemptions. In the Metropolitan Police district the Commissioner of Police does it; in the City of London and the liberties thereof, the Commissioner of City Police, subject to the approbation of the Lord Mayor.

In any other place, two Justices of the Peace in Petty Assembly may grant the exemption; and the authority which grants the exemption may at any time revoke it or alter it.

If you happen to get an exemption of this kind, you must be sure to put up a notice on the premises giving the particulars of your exemption. You should go to the clerk to the justices or to the Commissioner of Police, as the case may be, and ask what form of notice you shall put up.

The hours of closing extend, you observe, to all premises used for the sale by retail of intoxicating liquors. Now, some people who sell intoxicating liquors by retail for off-consumption also carry on other businesses. Everyone is familiar with **the grocer who has an off-licence** for the sale of wines and spirits. Must that grocer shut up his shop altogether at the time mentioned in the Act of Parliament as the closing hour for public-houses? There have been two cases that have settled this point. And as they will be useful to my readers as showing what sort of precautions a man should take to keep out of the clutches of the law, I will relate them.

There was a man named Brigden who kept a shop at Cobham, in Surrey, where he sold groceries and draperies. His shop was divided, though both grocery and drapery departments were part of the same building, and, indeed, part of what was originally the same room. But the drapery department was entered by a door leading from East Street; the grocery department was entered from Church Street. In the grocery department Mr. Brigden sold wines and spirits—he had the usual grocer's off-licence.

Now, between the two departments were some substantial rows of shelves. There were gaps in the rows, so that anyone who wanted to get from the drapery to the grocery department without going into the street could do so. But at 10 o'clock at night these gaps were closed with shutters, the light was put out in the grocery department, and the only business done in the shop was in the drapery department.

One night a police-constable entered the drapery department and told Mr. Brigden that he was keeping open his shop during prohibited hours. This was at about half-past ten. At the time the lights in the grocery department were out, and the shutters were up in the gaps between the shelves; so that to all intents and purposes the grocery department was isolated. The case went up to the High Court; and the judges held that the tradesman was not bound to close the drapery department—that is, not bound to close his whole shop. It was **enough if he closed up the part where the liquor was.**

The next case went even further. This was the case of a man named Fassell, also a grocer and draper with an off wine and spirit licence. In Mr. Fassell's shop there was no such division as there had been in Mr. Brigden's shop. But Fassell kept all the wines and spirits in his possession in a large wooden case, capable of holding about thirty dozen bottles. Ten o'clock was the closing hour for licensed premises in that part of the world; and, accordingly, at 10 o'clock every night Mr. Fassell put some shutters up in front of the wooden case and locked them. He also put a notice up on the case and in the shop window as follows:

“NOTICE.—Customers are informed, in accordance with the new Licensing Act, Messrs. W. & A. Gilbey's wines and spirits cannot be supplied at this shop after 10 o'clock at night.”

At 10.25 one evening Mr. Ovenden, superintendent of police, entered the shop, and told the proprietor that he was keeping open during prohibited hours and would be summoned. Fassell was summoned, and was convicted. But he appealed to the Court in London, and the Court in London said that he had not broken the law; because it was clear that he had not opened his shop or kept it open during prohibited hours for the purpose of selling liquor.

In both the cases just related the judges were very careful to say, that if at any time magistrates should find that the licensed person was only making a pretence of putting away the liquor, there ought to be a conviction. In other words, he must not simply put some bottles in a case and lock them up and then say, “I lock up the drink and only carry on the other parts of my business.” In my opinion, a grocer who even took an order for wine or spirits to be delivered the next day would be guilty of an offence against this part of the Licensing Acts if he took the order after the licensed closing hours.

The licence-holder is guilty of an offence against this part of the Act if,

during the time at which premises for the sale of intoxicating liquors ought to be closed, he

- (a) *Sells or exposes for sale* in such premises any intoxicating liquor ;
- (b) *Opens or keeps open* such premises for the sale of intoxicating liquor ;
- (c) *Allows* any intoxicating liquor, although purchased before the hours of closing, to be consumed on such premises.

All these offences are separate and distinct the one from the other. And the result very often is, that when a licence-holder is charged with one of them he escapes by proving that he was not guilty of that one, though he might be guilty of any of the three. Thus, a policeman makes a sudden raid upon a public-house a quarter after closing time. He finds there two men drinking. He reports the matter, and a summons is issued against the publican for opening or keeping open his premises for the sale of intoxicating liquor during prohibited hours. Suppose the publican can prove that he sold the drink to this man before closing time, he gets off. He might have been convicted if he had been charged with the offence called (c) above—that is, allowing the liquor to be drunk after closing time.

Another very usual defence in such a case is for the landlord to declare that the men were **friends of his**—that they did not buy the liquor at all, but that he gave it to them out of friendship ; that they did not enter the place after hours, but before. There is nothing to prevent a landlord having upon his premises, at any hour he pleases, friends of his who consume liquor ; that is, always provided that they do not buy the liquor. And it has been decided that a landlord is not absolutely bound to turn people out of his house directly the clock strikes the closing hour—always provided that he does not allow them to consume drink bought either before or after the closing hour, and that he does not keep his premises open. Here are two cases which will show you what a fine line there is drawn in these cases of keeping open.

The first is the case of a beerhouse-keeper named Pearse, whose place was at Burns, near Selby, where the closing time is 10 o'clock. For twenty-five years and upwards a meeting has been held annually in this beer-house, at which meeting was transacted the business of letting the "eatage" of the lanes in the township. Apparently these meetings were rather jolly ones. A local policeman took it into his head one year to watch the house ; and accordingly, from half-past nine till a quarter to eleven, he watched. Then he went to the beer-house, found the back door unfastened, and walked in. In the big meeting-room of the place he found seven jolly farmers, every man jack of whom had a glass in front of him. Some of the farmers had emptied their glasses, others had not. When the constable said something about prohibited hours, the seven jolly farmers remarked that they were not drinking—they were merely settling up the accounts of the letting.

Pearse, the landlord, was summoned for keeping his house open for the sale of liquor during prohibited hours. The magistrates convicted ; and on appeal to the High Court, the High Court confirmed the conviction. One

of the judges observed that he thought the policeman had been a little officious—he might have let the farmers finish their business and go. But still it was a question of fact for the magistrates. There was some evidence from which the magistrates might draw the inference that the premises were being kept open for the sale of liquor—the evidence being :

- (1) That one of the doors was unfastened ;
- (2) That men were in the house with glasses of beer before them.

The next case, a very recent one, was where a police-constable heard a noise as of men talking inside a public-house after closing hours. He waited outside for a little while ; and then the door was opened by a servant of the public-house, who came out with water and the broom to swill and clean the yard. Except for this, all **the doors of the public-house were locked.** The policeman strode into the house, and in one of the rooms found the landlord, the landlord's wife and daughter, and two men. Just as Robert made his appearance, the landlady was handing to each of the two men a glass of whiskey-and-soda. When the policeman raised his voice, and in awful tones charged the landlord with keeping open during prohibited hours, the daughter uplifted her voice and said that the two gentlemen were lodgers—that they had taken rooms in the house for the night. The policeman thought that the young lady's memory was slightly out on this occasion, and he summoned the publican for keeping open his premises during prohibited hours.

This case also was appealed to the High Court ; and the judges held that the publican could not be convicted because the offence he was charged with was that of "keeping open" the house. Now it was obvious that the house was not open at all, except in so far as the door was open to let out the man who was swilling the yard. That is to say, obviously the house was not open for letting in people to the house. In that case, therefore, the publican escaped—not because the men were lodgers, but because there was no evidence that the house was kept open after closing hours. I think myself that if the publican had been charged with selling to the two men in question intoxicating liquors after closing time, the magistrates might have convicted him, and the High Court could not have upset the conviction. For the mere fact that a man is found drinking in a public-house is evidence that the liquor was sold to him. And it is for the landlord to prove his innocence in such a case.

I now come to a somewhat thorny and not at all easy subject—THE *BONÂ FIDE TRAVELLER*. Closing hours do not touch the *bonâ fide* traveller. The licence-holder, provided he is a man who holds an on-licence, may supply a *bonâ fide* traveller at any hour of the day or night—Sundays, Christmas Day, Good Friday, or any other time. I have said that the permission **only extends to on-licence holders.** It is further restricted by the fact that the liquor sold must be sold only for consumption on the premises. If a *bonâ fide* traveller rides up to a licensed house at 10 o'clock on Sunday morning on his bicycle and says he would like a bottle of beer to take away with him, the publican must not sell it. He can sell the young

man as much beer as he likes to drink on the premises, but not to take away. I should also say that a man holding a six-day licence must not serve anybody on Sunday, not even a *bonâ fide* traveller. When I say he must not serve anybody, I mean he must not serve anybody except a person lodging at his house.

Who is a *bonâ fide* traveller? There is a great deal of popular misconception on the subject. There is a kind of idea that if a man chooses to walk or ride on Sunday a distance of three miles from the place where he slept on Saturday night he is a *bonâ fide* traveller as a matter of course. This is not the case. The misconception has arisen from the interpretation of a little bit of the Licensing Act, which, to my mind, is quite clear. After enacting that a *bonâ fide* traveller may be served during closing time, the Act goes to say :

“A person shall not be admitted to be a *bonâ fide* traveller, unless the “place where he lodged is at least three miles distance from the place where “he demands to be supplied with liquor, such distance to be calculated by “the nearest public thoroughfare.”

People have read this as though it said that every man who has come three miles from the place where he lodged the preceding night is a *bonâ fide* traveller. If you look at the words carefully you will see that they say nothing of the kind. They simply say that unless he has come three miles he is not a *bonâ fide* traveller—quite a different proposition from the other.

Before a man can prove himself within the definition of a *bonâ fide* traveller **he must be a traveller first** of all. By a “traveller” is meant someone on a journey. I do not mean necessarily a journey for any set purpose, or a journey with any particular object or from any particular place to any particular place. Thus, if I take a bicycle and set out for a ride on Sunday morning, having no intention of going anywhere in particular, I am a *bonâ fide* traveller, though it is not until I have travelled three miles from my house that I become entitled to demand refreshments at a public-house.

A publican should take the very greatest care that he does not supply with liquor, during prohibited hours, people who come during prohibited hours Sunday after Sunday. The reason is, that if a man takes a walk on Sunday merely for the purpose of getting beer he is not a *bonâ fide* traveller, no matter if he travels thirty miles instead of three. This was discovered by a beer-house keeper in the county of Northampton not many years ago. This man had a beer-house in a village between three and a quarter and three and a half miles from the thriving borough of Northampton. This was just a convenient distance for thirsty souls ; and on Sunday morning scores of Northampton artisans used to walk out to this beer-house, be asked where they slept the night before, reply “Northampton,” and then be served with beer. So many of them came that the house could not hold them, and the enterprising landlord put trestle-tables and forms outside in his yard. One Sunday the police made a raid and found 132 people in that yard, all drinking beer. With the exception of four or five, the whole of

these people were artisans from Northampton, and it was proved that many of these men came out Sunday morning after Sunday morning to the same place.

The local justices duly convicted the landlord of selling during prohibited hours; and when the landlord appealed his appeal was dismissed by a majority of four judges to one. The present Master of the Rolls (Sir Richard Henn Collins) said, "The object of these men was evidently not travel, but beer. They were, therefore, not travellers at all." And their lordships decided that the mere fact of a man having walked three and a quarter miles on Sunday morning did not entitle him to be served with liquor as a *bona fide* traveller. Be careful, therefore, if you are a licensed victualler, not to run the risk of an endorsement on your licence by serving during prohibited hours people who come to you from just outside the three-mile limit, Sunday after Sunday. The mere fact that they turn up every week with such punctuality ought to be enough to convince you that they do not come for the travel, but for the beer.

Beside the *bona fide* traveller, the railway traveller is entitled to be served without regard to the statutory hour of closing. He is not entitled to be served at any licensed place, but only at a railway station. And to justify the serving of him during prohibited hours, the person serving him must be prepared to prove that he was "a person who arrived at or was departing from such station by railroad."

In practice this means that if a person takes a ticket at a station for a journey to be made from that station by train, however short the journey may be, he may be served with liquor at the railway refreshment-room a reasonable time before his train is to start. Or if he has made a railway journey and arrives at a station during prohibited hours, he is entitled to be served with reasonable refreshment at that station also.

Now although every other place in the principality of Wales is to be closed on Sunday, railway refreshment-rooms are not obliged to be closed; and people in charge of these refreshment-rooms may serve passengers with liquor. The consequence is, I am told, that a great deal of Sunday travelling takes place in Wales—in fact, something like a coach-and-six has been driven through the Welsh Sunday-Closing Act by reason of this exemption. For example, I will relate an instance that occurred a few years ago.

One Williams took a ticket one Sunday at Cymmer Station, on the Rhondda and Swansea Bay Railway. He was not making a very long journey—only to an unpronounceable place called Blaengwynfi, which was two miles from Cymmer. He went down to the refreshment-room at Cymmer Station, about ten minutes or a quarter of an hour before the train was due, produced his railway ticket, and procured drink. A police inspector was on the look-out, and he asked Williams to show his ticket. Williams did so; then the inspector took out a summons against him for being on licensed premises during prohibited hours. The train came in, and Williams, the inspector watching him, got into a carriage and rode as far as Blaengwynfi. When the summons was heard the justices decided, after hearing the evidence, that Mr. Williams only made the journey so as to be able to get a drink. Therefore they convicted

him of the offence charged. Williams appealed to the High Court, and on the facts the High Court ordered him to be acquitted.

Now I am going to show you **a distinction and a difference.** You see that Williams did in fact depart by railroad from the station where he got the liquor. Possibly, he only made the journey because if he had not been departing from the station by railroad he could not have procured liquor. It was urged he made the journey in order to evade the Welsh Sunday-Closing Act. But still, he did make the journey. Now, if the justices had found that Williams never intended to make the journey at all, that he merely bought a ticket in order that he might pretend to the barmaid that he was going to make a journey when in fact he was not, that he only got into the train because the inspector came, and not because he had intended all the time to make the journey, the magistrates would have been at liberty to convict him. I hope you see that there is a substantial difference between these two positions: one is that the defendant buys a ticket because he intends to go a railway journey—he intends to go the railway journey, because that is the only way he can get drink; the other is that the defendant buys a railway ticket not intending to make a railway journey at all. He is only going to a railway refreshment-room pretending he is going to make a journey, and he has bought a ticket so as to be able to deceive the barmaid. The fact that, owing to unforeseen circumstances, he does make the journey which he did not intend to make, will not save him. Of course, the difficulty will be, in every case, for the police to prove that the man did not intend to make a journey when he bought the ticket.

You may supply lodgers at any time you like; I mean persons who are staying in the house as distinct from persons who merely have called for refreshments. Even a person with a six-day licence or an early-closing licence may supply those lodging in his house on Sunday or late at night.

There is no penalty for supplying private friends. The Act says that you may supply, after the hours of closing, "private friends *bonâ fide* entertained by you at your own expense." A private friend seems to be someone who is not a customer. The magistrates have nothing to do with the reasons why you have invited your friends and treated them to drink, except that they may inquire whether or not the friends are really paying for their entertainment in some substantial manner. An exchange is as good as a sale—as if a man comes into a public-house after closing time and offers you a rabbit for a quart of beer, and you make an exchange with him. The mere fact that money did not pass between you does not make him a private friend entertained by you at your own expense.

It appears that the holder of a licence must not ask the ordinary customers who happen to be in his place at closing-time to stay behind and he will treat them as private friends. This may be an evasion of the Act. You see, if a landlord were to make a practice of this kind of thing, there would be a great rush for his public-house just before closing-time, and he would really more than make the cost of treating the people after hours by the money taken before closing. The prospect of a treat after closing-time would, in fact, be a bait

thrown out by the landlord. Not only are lodgers and the landlord's private friends exempt from the regulations with regard to closing-time, but the lodgers' friends are also exempt, provided they do not themselves pay for liquor. Thus, suppose you keep an hotel, and I come there one evening and engage a bedroom. I sit down in the coffee-room; somebody comes into the coffee-room for a casual drink just before closing-time. When the waiter puts his head in at the door murmuring "Closing-time, gentlemen," I say to this man, "Don't move; stay and have a drink with me." Suppose the man stays, and I pay for all the drinks after closing-time, you, as the landlord of the hotel, are not liable to any penalty. For as far as the lodger is concerned the hotel is his own house—with the exception he must not play at billiards, nor at unlawful games, nor at any game whatever for money. **Refreshment-houses** have a law of their own with regard to closing-time. I have previously told you that a refreshment-house keeper who does not keep open after 10 o'clock, nor take down his shutters before 5 in the morning, is not required to take out a licence. Therefore, when I speak of a refreshment-house, I mean a refreshment-house which does not sell liquor, but which keeps open after 10 o'clock at night.

A licensed refreshment-house must not be kept open after the hours when the public-houses in that district are to be shut. This will not, of course, affect rural districts, where houses must close at 10 o'clock. It means that where public-houses in the district have to be closed at 11 or 12.30, the licensed refreshment-houses of that district must also close at the same time. The refreshment-house keeper must not open or keep open, nor sell refreshments or any other kind of article whatever, nor expose them for sale. But while houses licensed for the sale of intoxicants can only be opened at 5 a.m., refreshment-houses licensed, but not licensed for the sale of intoxicants, may open at 4 a.m. The Welsh Sunday-Closing Act does not apply to refreshment-houses, so that refreshment-houses where no intoxicants are sold may be opened on Sundays during the same hours as in England.

The next thing to be noticed about licensed refreshment-houses is that no liquor may be consumed there during hours when the premises would be closed for sale of intoxicating liquors if the house were an inn. This, of course, refers to those refreshment-houses which have no liquor licence where the proprietor allows liquor to be sent for by customers. And lastly, the refreshment-house keeper must remember that if he has a foreign wine licence of the early-closing kind, he is guilty of an offence if he keeps his house open after ten, whether as a refreshment-house pure and simple or as a place for the sale of wine.

For all the offences referred to above in respect of refreshment-houses, the penalty of conviction is £10 for the first offence and £20 for every offence thereafter.

Licence-holders must be careful in **selling liquor to young people**. It has for a good many years been an offence against the Licensing Acts to sell spirits to children under the age of sixteen for consumption on the premises. This penalty is visited upon the holder of a licence who himself sells to a

child or who allows any other person to sell. By way of protection to the licence-holder, if the person to whom liquor was sold, though he is really under sixteen, is apparently more than that age, the justices cannot convict. I heard of some justices who once read the section the other way about. It was a case of a publican who had sold spirits for consumption on the premises to a lad of eighteen, who, however, did not look more than about fourteen. Being summoned by the police, the licensed victualler produced the parent of the youth, who produced the birth certificate, and swore that the person therein alluded to was the person alleged to be under sixteen, who was, in fact, eighteen. The worthy magistrates called the young man into the box, looked at him, and decided that he was "apparently under the age of sixteen." Now the Act says that a publican shall not sell spirits to a person apparently under the age of sixteen years. "Therefore," said the justices, "the publican is guilty." I believe the magistrates' clerk managed to stop them in time, by pointing out that if the young persons were proved to be in fact over sixteen they could not convict. At the same time, I should not like to say that the justices' construction of the Act was anything but literal.

If you are charged with selling spirits to a person apparently under the age of sixteen, and you are informed by the young man or his parents that he is in fact over the age, do not go down to the police-court without proper evidence to prove it. If you simply take the young person down, and he swears that he is over sixteen, that will not do. Of course, no man can prove when he himself was born, because it is not a fact within his own knowledge and recollection. And if the magistrates, despite the oath of the young person, come to the conclusion from the look of him that he is not sixteen, they will be justified in fining you, and the High Court will not upset their decision. The proper way to prove the age of anybody is to get a copy of his birth certificate from Somerset House—which you are entitled to on payment of a small fee—and getting somebody, preferably one of the parents, to go down and give evidence. This person, on going into the witness-box, will produce the birth certificate, which shows that a person named John, the son of Mary and Joseph Smith, was born at Manchester on the 1st of April, 1884. The witness says, "I knew Mary and Joseph Smith. They are the persons mentioned in this certificate. The person John Smith, whose name is given in the summons—or whom the defendant is charged with serving with spirits—is the John Smith mentioned in this certificate." That is proof sufficient of the age of John Smith. If there is no time for you to procure a birth certificate, and you can take down as a witness either of John Smith's parents or someone who was present at his birth, that will do. But in the absence of this unanswerable proof, the magistrates will be justified in deciding on John Smith's appearance. And if John Smith is very young-looking, so much the worse for you.

By the Sale of Liquor to Children Act, 1901, it has been enacted that the sale of liquor to persons under the age of fourteen is unlawful

except under certain circumstances. The Act was so fiercely opposed and so much "amended" in the House of Commons during its passage through that assembly, that it has become not particularly easy to construe. I will, however, call your attention to what I consider the points in it.

It applies, in the first place, to all licence-holders, whether for consumption on or off the premises. It prohibits the sale of any description of intoxicating liquor to the persons mentioned. The prohibited customers are persons under the age of fourteen years. The liquor must not be sold or delivered to such persons for consumption by any person. Thus you must not sell a person aged fourteen a pint of beer for him to take outside for a man aged thirty. The Act seems to be aimed at keeping persons under fourteen out of public-houses altogether. The Spirits Act previously cited simply strikes at the consumption of spirits by children.

But here you begin to get in the exceptions. I cannot say that the first exception is logical. I am no politician; I speak merely as a lawyer. The first exception to which I refer is, that it is not unlawful to deliver to a person under the age of fourteen not less than a reputed pint in a corked and sealed vessel for consumption off the premises. This seems to mean, or rather to be intended to mean, that you can send a child under fourteen for a pint bottle of beer; but you may not send him for a pint of beer in a jug. Why in the world you should restrict it to a pint bottle I do not know. Corked means closed with a plug or stopper made of cork, wood, glass, or some other material.

"Sealed" means so secured that you have to destroy the seal before you can take out the cork, plug, or stopper. The seal may be made of paper or anything else.

The licence-holder is only liable, however, for selling or delivering if he does it knowingly. By which, I suppose, it means that he must not, and the prosecution must prove that he knew the person to be under fourteen. Moreover, a licence-holder is only liable for the acts of his servants in this particular if he allows them to supply children under fourteen. The word "allow" implies of necessity that the licence-holder knows that his servants are supplying such people.

In one respect, however, the Act is wide enough. The offence need not be committed on licensed premises. If the liquor is sold or delivered to the young person anywhere except at the residence or working place of the purchaser, it is just as much an offence as if the sale had been in a public-house.

Not only is the licence-holder who supplies the liquor liable to a penalty of forty shillings for the first offence and £5 for any subsequent offence, but the person who sends the child to any place where intoxicating liquors are sold, delivered, or distributed for the purpose of obtaining such intoxicating liquors, is liable—except, that is, where the child is sent for not less than a reputed pint of liquor in a vessel sealed and corked.

The Act does not apply to young persons employed by the licence-holder for the purpose of his business. That is to say, a licensed person may send

any member of his family or any servant or apprentice, no matter what age is the messenger, to deliver intoxicating liquors.

No doubt one thing that will interest all licence-holders is the question of the relations between themselves and the police. The law is **that a constable may enter licensed premises at any time**. I mean, of course, for the purpose of his duty—not for the purpose of refreshing himself. His permission to enter the premises is not confined merely to cases where he may prevent the law being broken—as, for instance, to stop a fight or to eject a drunken man; he is also entitled to enter for the purpose of detecting the violation of any of the provisions of the Licensing Act; and any person who either himself personally or by any person in his employ, or by any person acting by his direction or his consent, refuses to admit the constable on demand, he is liable to be fined £5 for the first offence and £10 for the second and other subsequent offences. There is no doubt, also, that a publican or his servant who assaults or wilfully obstructs any constable in the execution of his duty might be proceeded against under the Prevention of Crimes Act. This has no special relation to licensed premises—it is the ordinary proceeding against any person who resists a constable in the execution of his duty. The penalty for the first offence is here £5, with imprisonment in default of payment for not more than two months.

Let me suppose a case in which a policeman comes to your house after it has been shut and demands admission. Are you entitled to ask him for a reason why he wants to enter? I think you are not. On the other hand, suppose you refuse to let him come in and he takes out a summons against you for preventing him entering, you are not necessarily guilty. For although the policeman was not bound to tell you why he wanted to come in, he is bound to tell the magistrates what reason he had for demanding admission. He must satisfy the Court that he had some reasonable ground for suspecting that the Licensing Act had been broken or was going to be broken. If he cannot prove this, the prosecution fails; for a policeman is only a servant of the law, and he cannot use his authority to gratify some idle curiosity of his own.

There was once a policeman at Bristol who went to the public-house of Mr. Duncan. Now Mr. Duncan had let a room for the night to a benevolent society—at least, I believe it is a benevolent society—called the Royal Antediluvian Order of Buffalos. Half an hour before closing-time, Police-constable Dowding of the Bristol force, being on duty close to the public-house, heard sounds of music and singing coming from Duncan's premises. He marched in, following his ears, and proceeded with much majesty to the room. It was the Buffalos who were thus rejoicing. The majesty of the law, in the person of Police-constable Dowding, received a check at the door of the room. For there was a person no less than an Antediluvian Buffalo called a "tiler." His buffaloship demanded from the constable the sign. The constable was unable to give the sign, but demanded admission in the name of the law. The tiler steadfastly refused to admit anyone, whether policeman or not, who was not an Antediluvian Buffalo. The constable promptly

summoned Duncan. Asked at the police-court what part of the Licensing Acts he suspected of having been violated or been about to be violated, the constable replied that he suspected there was going to be excessive drinking; and, of course, drunkenness on the premises is a violation of the Licensing Acts. The Bristol justices upheld the constable; but the publican appealed to the High Court on the point of law. The point of law was that the police-constable ought to show not only that he suspected something, but that he had reasonable grounds for suspecting it.

I well remember the case being argued by the late Mr. George Candy before Justices Cave and Lawrence. There was a good deal of "chaff" about the Buffalos. At least, Mr. Justice Cave was moved to say that from his knowledge of natural history he did not believe that buffalos were addicted to excessive consumption of alcohol; and, further, he could not believe the constable thought so either. In fact, the case for the police was completely upset. The constable could not adduce one single reason why he should suspect a lodge of the Antediluvian Order of being about to give way to drunkenness. Wherefore the Order triumphed, and the publican was dismissed from the charge.

I may add, for the guidance of publicans, that this case has been thought by some people to be a decision in favour of the proposition that when a publican lets a room for the private use of a lodge or a party, the police have no right to enter that room. This is a complete delusion. If the Bristol policeman could have given any reason why he should suspect that excessive drinking was about to take place or was taking place in the lodge-room of the Buffalos, he would have been entitled to demand admission. Of course, a landlord is entitled to let a room and to guarantee that those to whom the room is let shall be free from molestation and intrusion. But he cannot prevent the police from entering all or any of the rooms in his house, at a reasonable time, in execution of their duty.

You see, I say *at a reasonable time*. Naturally, if a policeman comes without a warrant in the small hours of the morning and knocks you up, and wants to come in and examine the bedrooms where your guests or family are asleep, you have every right to refuse his admittance. If he has any very pressing reason for wanting to search your place, let him go to a magistrate and procure a search warrant. But at all reasonable times you must admit him and not allow him to be obstructed. And if I were a licensed person I should always be disposed to afford the police every assistance. The licensed person who begins thwarting the police of his district, even by merely standing on his strict legal rights with them, is very apt to come to grief in the end. The police have an enormous amount of influence in connection with licensing matters, and the wise publican makes a friend of the Force.

A police-constable has no right to demand admittance to premises which have only an Excise licence. **His right is confined to premises with a justices' licence.** For example, a spirit dealer with a dealer's retail spirit off-licence needs no justices' licence; and he is, therefore, free from the obligation to admit the police. Of course, the police may obtain admittance to enter any place with a search warrant.

A man who has a wine on-licence is liable to have his premises entered, not only by the police, but also by an officer of Excise. But the officer of Excise has in respect of such permission only the right to enter during the ordinary business hours—I mean during the hours which it is lawful for the house to be open for the sale of intoxicating liquors. The Excise officer may enter any house, cellar, room, or place which has been licensed for the storing, keeping, or retailing of wine. He may examine all the wine kept there, and he may seize all spirits which he finds in the place.

Apart from the past-mentioned right, it only applies to premises licensed only for the sale of wine; nobody can enter licensed premises to search for forbidden liquor unless he has a **proper search warrant** under the hand of the Justices of the Peace. If the local police or Excise authorities have reason to believe that shebeening is carried on, they may apply to a local magistrate for a search warrant. The search warrant runs for a month from the date it was issued. It authorises a constable who is named in the warrant—or perhaps several constables—to enter the place named in the warrant; to use force if necessary in order to get in; to examine the place and every part of it, and search for intoxicating liquor; to seize and carry away any intoxicating liquor found in the place, if there is reasonable ground to suppose that it was there for the purpose of unlawful sale; and also to seize the vessels containing it.

This part of the above law is very sweeping. When a constable enters premises with a search warrant of the kind just described, if he finds and seizes any liquor all the people found on the premises may be summoned; and any one of them who cannot give a proper account of himself is presumed to have been on the premises for the purpose of illegal dealing in intoxicating liquors, and is liable to a penalty not exceeding forty shillings. The police-constable may demand the name and address of all people he finds on the premises. If he has any reason to think the name and address is false he may put questions, and if the replies given to him are not satisfactory he may then and there take into custody the person in question. A man who refuses to give his name and address is liable to a penalty of £5.

Of course, the owner of the shebeen is liable to be fined the heavy penalties mentioned in the early part of this chapter for dealing in liquor without a licence.

Every licensed person is bound to **produce his licence** or exemption order to a justice, constable, or Inland Revenue officer on demand. If he does not produce it within a reasonable time after the demand is made, he is liable to a penalty of £10.

Licensed refreshment-house keepers are liable to be visited by constables and police-officers at any time, just the same as publicans. And any refreshment-house keeper, or servant in his employ, who by his direction refuses to admit the constable, is liable to pay £5. That is to say, it is the licensed person who is liable to pay, whether it is he or his servant, etc., who refused to admit the officer. In addition to the fines, the licence may be forfeited, and the offender disqualified for two years. And if there are two

convictions within two years in respect of the same premises, those premises are disqualified for three years from being the subject of a licence.

Other things which publicans must be careful to notice are :

The payment of wages in public-houses. The prohibition extends to every public-house, beer-shop, or place for the sale of spirits, wine, cider, or other spirituous fermented liquor. The licence-holder cannot escape liability even if he allows wages to be paid in his office, garden or yard, or in any other place which belongs to the public-house or is occupied with it. Naturally, this does not extend to wages paid by the publican himself. It is intended to prevent employers taking their work-people to a public-house in which they have an interest, and pay them in the public-house, so as to induce them to spend their wages there before going home. The penalty is £10 for each offence.

All victualling-house keepers are liable to billet soldiers when required. When troops are passing through a town, the police authorities must make out a list of all inns, hotels, livery stables, ale-houses, holders of on-licences for wine, and every licensed house for the sale of brandy, spirits, strong waters, cider, or metheglin by retail. The officers in charge of the troops furnish a list—or, rather, an account of the number of men and horses, also the number of officers and their horses. Then the constable must divide the officers and soldiers and horses fairly between the people mentioned, according to the amount of accommodation they have. Suppose that a constable has made out a billet list and has not allowed for all the troops and horses, he can then compel the licence-holders to take in the surplus in the same proportion as on the original billet list. The list the constable has furnished you with must show what you are to provide for the men, and what you are to receive for it. If you offer any bribe to a constable you are liable to a fine of not less than forty shillings and not more than £5 ; and the same if you refuse to receive or properly accommodate any officer, soldier, or horse billeted on you, unless you can provide in the neighbourhood other adequate accommodation. Each officer, soldier, and horse refused by you would constitute a separate cause of offence ; so that if you have six troopers and six horses sent, and you refuse them, or give them accommodation and refreshment inferior to what they are entitled to, you would be liable to be fined as much as £60.

You must supply accommodation at the following rates :—

Officers : Lodging and attendance (officer paying for food), 2s. a night.

Soldiers : Breakfast of $\frac{1}{2}$ lb. bread and cup of tea, 1½d. ; on not more than two days (if soldier requires it), hot meal consisting of 1¼ lb. meat before cooking, 1 lb. bread, 1 lb. potatoes or other vegetables, 2 pints small beer, and vinegar, salt, and pepper, price 1s. 3½d. ; lodging and attendance, 4d. per night ; where no hot meal furnished, soldier entitled to vinegar and salt, use of fire and cooking utensils for his own cooking, use of plates, knife and fork, etc., lodging, attendance and lights for 4d. a day.

Horses: Stable room, 10 lb. oats, 12 lb. hay, 8 lb. straw every day, price 1s. 9d. a day.

The publican is not bound to rely on the efforts of the police to keep order in his house. He is **entitled to keep order** there himself. And to that end he may refuse to admit any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under the Act. And if such a person gets into the premises or becomes drunken, violent, quarrelsome, etc., while he is there, the publican may first request him to go, and if he does not go he may turn the man out. A man who does not go out when he is asked to do so by the publican, his agent, or servant, or constable, is liable to be fined £5. Moreover, a publican, unlike other people, is entitled to demand the assistance of any constable in order to turn out every such person as authorised.

So far the Licensing Act of 1872. But in addition to this statutory power of ejecting persons who are drunk, violent, quarrelsome, disorderly, and so on, a publican has the right to turn out of his house anybody to whose presence he objects on any ground. The right varies a little according to **whether the public-house is an inn or not**. If it is an inn—that is, a place which, so to speak, advertises itself as a place of entertainment for travellers—the inn-keeper may not eject a traveller who demands lodging and refreshment so long as the man behaves himself. And the fact that the traveller misbehaved once before is no reason why he should be refused admission now. But even an inn-keeper is entitled to eject someone whose presence is reasonably objectionable. Thus, a man who kept an inn once had a sweep come into it. The landlord, on seeing the man, told him to go away and wash himself and make himself clean. For the sweep had come into the inn straight from following his calling. The gentleman was thirsty, as, I believe, chimney-sweeps often are; and he strongly objected to the landlord's remarks about his personal appearance. He refused to go, saying that he was behaving himself properly, and had done nothing to cause him to be turned out. However, the landlord took the gentleman by the neck and threw him out, using only just so much force as was necessary to accomplish the ejectment. And it was held, after a solemn argument, that mine host had every right to turn the man out if he liked.

The rights of a **licence-holder who is not the keeper of a common inn**—that is, who does not pretend to lodge travellers—is much more complicated than that of an inn-keeper. The ordinary publican may request the man to leave his house for any reason or no reason. He may say that he does not like the look of his face; he may say that the man has been drunk once before. It does not matter what the reason is. And if the person requested to leave does not comply with the request with reasonable celerity, the publican may turn him out by force. He must not use any more violence than is necessary to make the man go—and in this case he has no right to call in the assistance of the police. A policeman is not bound to assist a landlord to eject somebody from his house unless that person is drunk, violent,

quarrelsome, or disorderly, or is a person whose presence on the premises would subject the landlord to a penalty under the Licensing Acts. The right of the publican to use force to turn a purely innocent and inoffensive person out of his house rests on the Common Law. You and I, in respect of our private houses, have exactly the same right. If a man comes into my house peacefully and lawfully, and I tell him to go out, and he does not go out, I can turn him out by force.

ENDORSING CONVICTIONS ON THE LICENCE.

The clerk to the licensing justices in every district keeps a register of licences. In the register he has to write down particulars of all the licences granted in the district, whether on-licence or off-licence, and so on ; particulars of the premises in respect of which the licences are granted, the owners' names and addresses, and the names and addresses of the licence-holders. When you obtain the grant of a new licence, or the renewal of an old one, at the Annual Licensing Sessions, the justices' clerk will always ask you for the name of the owner of the house and his address, and you must give it. This register is open to inspection by any ratepayer in that district and by any person who holds a licence in that district. Now if you always conduct your house with perfect regularity, and never have any of those unpleasant mishaps which sometimes cause the most innocent of the licensed victuallers to appear before the neighbouring justices, the page of the register devoted to your licence will only contain the particulars just related. But if misfortunes arise the page will speedily be written upon more and more. On it must be entered all the convictions which take place against the licence-holder. I do not mean merely the convictions which happen to be endorsed on the licence by order of the Court ; I mean all the convictions for offences against the licensing laws, and convictions for adulteration of drink.

The people who grant and renew licences—that is to say, the licensing justices—are not necessarily the same people before whom you will appear if you are summoned for an offence. Very often the clerk to the licensing justices is the same as the clerk to the Petty Sessions where you are tried for offences. But if this should not be so—if the licensing justices do not employ as clerk the same gentleman who is clerk to the magistrates, the clerk to the magistrates must, whenever a licensed person is convicted of an offence, send a note of it to the clerk to the licensing justices, so that the latter may enter it in the register. I have told you, in going through the various offences which may be committed against the Licensing Acts, that in respect of some of them the convicting justices may order the conviction to be endorsed on your licence. Now the moral of it is this: that **a licence which is three times endorsed by order of the justices is forfeited** on the third occasion. That is to say, if your licence has been endorsed twice, and is then ordered to be endorsed a third time, there is an end of it.

When a licensed person is summoned for any offence which, on conviction, may be endorsed on his licence, the summons always states that the

accused must bring his licence with him to the Court on the occasion of the the summons being heard. When the case has been heard, if the licence-holder is convicted, and the Court orders the conviction to be endorsed on the licence, the course of procedure is this: The Clerk of the Court writes on the back of the licence the short particulars of the conviction, together with the penalty imposed, and the licence is returned to the publican. But if the licence has already been twice endorsed, as the third endorsement causes the licence to be forfeited, the clerk retains the document.

When a man's licence is forfeited for a third conviction in this way, he becomes **disqualified for five years** from holding any licence. Neither is this all; for the **premises** in respect of which the licence was granted also become disqualified for two years from the third conviction. But as to this latter, the Court may direct, if it so wishes, that the premises shall not be disqualified.

There is another case in which premises may be disqualified. If the person holding a licence of a house is sentenced to have the licence endorsed twice, the second conviction is put down in the register of licences against the premises. Every conviction subsequently ordered to be endorsed on the licence held for those premises must also be recorded in the register. For example, Jones is the licence-holder of The Jolly Waterman. He is convicted twice of permitting drunkenness on the premises, and both these convictions are ordered to be recorded on his licence. The second conviction goes down in the register as against the premises. Then the owner of the house gives Jones notice to quit, and Smith becomes tenant and procures a transfer of the licence to himself. Smith is then convicted of serving a drunken man with liquor. This conviction is ordered to be endorsed on the licence; and it is bound, therefore, to go down in the register against the premises. The landlord ejects Smith and lets the house to Brown. But Brown is within a short time twice convicted of keeping a house open during prohibited hours. These offences are also ordered to be recorded on the licence, and must be put down in the register as against the premises.

Now the law provides that when **four convictions have within five years** been recorded as against the premises, the premises become disqualified for one year. It makes no difference whatever that the licensed persons who had been convicted were different people.

Again, the premises become disqualified for one year if **two persons** licensed in respect of the same premises have their licences forfeited **within any period of two years**. There are, as you know, some cases in which a licence is forfeited for the very first offence.

But it might, of course, happen that a man keeps a public-house in a respectable manner, and does his very best to preserve order, and yet by the negligence of some servant he becomes liable for some offence under the Licensing Acts. And it may happen that this man keeps an inn in one of those districts where the magistrates are very strict, so that the licence is endorsed every time an offence is committed. Now the legislature did not intend to forfeit a man's licence merely for the commission of an occasional

offence. Wherefore, after an offence has been committed five years it ceases to count. What I mean is this: Suppose a licence-holder was convicted of the offence of permitting drunkenness in 1895 and again in 1898, both convictions being recorded on his licence. In 1901 he is convicted of harbouring a constable. Now this is the third offence, and if the justices order the last conviction to be recorded on his licence, that makes three offences recorded. But because the first of the three was committed more than five years before the last, it does not count as one of the three offences which make a licence forfeitable. Therefore, the licence is not forfeited. But if the publican is convicted in 1902 for serving a drunken person, and this is ordered to be recorded on his licence also, he forfeits his licence. You go back for five years and count all the convictions within that time. Suppose the last-mentioned conviction takes place on the 30th July, 1902, you go back to the 31st July, 1897. In that period you find the publican has been convicted once in 1898, the second time in 1901, and the third time in 1902. But if the publican can, after his unfortunate experience in 1901, keep his licence unspotted until 1904, the 1898 conviction is wiped out.

Not only with regard to the forfeiture of licences does the five-year rule obtain. It also affects the penalties. Most offences under the Licensing Acts are punishable by a fine of £10 for the first offence and £20 for any subsequent offence. Suppose I am convicted of selling liquor not by standard measures on the 1st April, 1900. I am fined £10—the maximum penalty. If I am convicted of the same offence up to and including the 31st March, 1905, I may be fined £20, because that is a second offence. But if I can manage to avoid committing this crime—or, what is the same thing here, avoid being caught at it—until after the 31st March, 1905, I can only be fined £10 at the most. This is because when five years have expired the first offence is wiped out, and I begin with a clean sheet.

But although a conviction five years old or over does not count in the matter of forfeiting a licence or of increasing a penalty, I think it does count when it comes to the matter of **disqualifying either premises or person**. Thus, if a person is found selling liquor which he is not authorised by his licence to sell, for the first offence he may be fined £50, for the second offence £100, for the third offence £100. For the second offence also he is disqualified for five years from holding a licence, and the licence is forfeited. On the third offence, the licence is forfeited and the offender disqualified for ever. Now suppose a man is convicted of this offence in 1895. He is again convicted in 1901. My reading of the Act is that he can only be fined as for a first offence (maximum £50). His licence cannot be forfeited; but he is disqualified for five years; because although the 1895 offence is wiped out as far as fine and forfeiture are concerned, it is not wiped out as regards personal disqualification of the offender. It does occasionally happen that when a conviction is ordered to be recorded on the licence and the clerk of the court forgets to write the endorsement, some people think the conviction does not count. This is quite a mistake.

It is the conviction and the order to endorse the licence that matter. The mere writing makes no difference.

APPEALS.—When you are convicted of an offence under the Licensing Acts, or under any other Act whereby your licence becomes subject to endorsement, you may appeal to the Court of Quarter Sessions. As a rule, a publican does not mind so much being convicted, if the penalty imposed upon him does not include an endorsement on his licence. He does object to that; because very often, if he is the tenant of a house on a lease, the lease contains a clause that if the tenant is convicted and has his licence endorsed he forfeits his lease. Now, as a rule, there is no appeal from the sentence of a Court merely as to the amount of the penalty. But in cases of this kind the licence-holder can appeal; and when he appeals, if he knows he is bound to be convicted, he should direct all his evidence to showing the Bench that the circumstances of the case are such that he does not deserve to have his licence endorsed. I have known many a case where a publican has appealed from Petty Sessions to Quarter Sessions merely for the purpose of having the endorsement removed from his licence, and has been successful. The conviction has been affirmed, but the chairman of the sessions has announced that the licence will not be endorsed. It is always worth risking an appeal.

IN SCOTLAND

there is a considerable difference as regards the conduct of a licensed house from what is the case in England. The Scottish Licensing Acts do not, as the English Licensing Acts do, set out a large number of things to be done and things not to be done. The Scottish Acts, on the whole, rely upon the form of the licences. I will come to that presently. I merely wish, first of all, to give you something to remember as to specific offences that may be committed against specific Acts of Parliament in Scotland.

To begin with, the law as to **sale of liquor to children** is the same as it is in England (*see* p. 1494). The law as to harbouring thieves and reputed thieves, and as to permitting stolen goods to be deposited on the licensed premises, is also exactly as it is in England. There are other offences somewhat similar to those mentioned by the Acts and which may be considered as practically the same.

The first is **harbouring a constable on duty**. Any occupier of licensed premises who knowingly suffers to remain in his premises any constable on duty, unless for the purpose of quelling disturbances or restoring order, or otherwise in discharge of his duty, is liable to a fine of £5. So is any licensed person who directly or indirectly supplies a constable on duty with intoxicating or excisable liquors. So far the law is the same as the English law. But in the Scottish burghs these provisions as to harbouring a constable and serving a constable with liquor apply, not only to places licensed for the sale of liquor, but to all buildings or parts of buildings, or other places of public resort, which are used for the sale or consumption of provisions or refreshments of any kind. So that in Scotland the keeper of an ice-cream shop

may be convicted of harbouring a constable, if the ice-cream shop is within a burgh.

On the other hand, every licence granted, whether to an inn- or hotel-keeper, a publican, a dealer, or a grocer in Scotland contains a great many conditions. And if the holder of the certificate breaks one of these conditions he will find himself before the Licensing Bench charged with the offence of breach of certificate. That is to say, he will not be charged with, for instance, serving a drunken person contrary to the Licensing Acts; he will be charged with serving a drunken person contrary to his certificate. Herewith I give, for the edification of my readers, **the three forms of certificates** for licences granted in Scotland.

On the whole, you will see that they are identical the one with the other.

FORM OF CERTIFICATE FOR INNS AND HOTELS.

"At a General Meeting for granting and renewing Certificates for the Sale of Excisable Liquor, held by His Majesty's Justices of the Peace acting in and for the County [or of the Magistrates of the Burgh, as the case may be] of _____, holden at _____, within the said County [or Burgh] on the _____ Day of _____ in the Year One thousand nine hundred and _____. His Majesty's Justices of the Peace acting in and for the said County [or the Magistrates of the said Burgh] assembled at the said Meeting, did authorise and empower A. L., now dwelling at _____, to keep an Inn and Hotel at _____, in the Parish of _____ and County aforesaid [or Burgh aforesaid] for the Sale in the said House, but not elsewhere, of Victuals, and of Spirits, Wine, Porter, Ale, Beer, Cyder, Perry, or other Excisable Liquors [or of Victuals, and of Porter, Ale, Beer, Cyder, or Perry] [or of Victuals, Wine, Porter, Ale, Beer, Cyder, or Perry], provided the said A. L. shall be licensed and empowered to sell such Liquors under the Authority and Permission of any Excise Licence to him or her in that Behalf granted, on the Terms and Conditions following: that is to say, that the said A. L. do not fraudulently adulterate the Bread or other Victuals or Liquor sold by him, or sell the same knowing them to have been fraudulently adulterated; and not use in selling the same any Weight or Measure which is not of the legal Imperial Standard; and do not sell any Groceries or other uncooked Provisions in the said House or Premises, to be consumed elsewhere; and do not knowingly permit any Breach of the Peace, or riotous or disorderly Conduct, within the said House or Premises; and do not knowingly permit or suffer Men or Women of notoriously bad Fame, or Girls or Boys, to assemble and meet therein; and do not supply Excisable Liquors to Girls or Boys apparently under Fourteen Years of Age, or to Persons who are in a State of Intoxication; and do not permit or suffer any unlawful Games therein; and do not keep Open House, or permit or suffer any Drinking on any Part of the Premises belonging thereto, or sell or give out therefrom, any liquors, before Eight of the Clock in the Morning, or after such hour at Night, on any Day not earlier than Ten and not later than Eleven, as the Licensing Authority may direct, *with the Exception of Refreshments to Travellers or to Persons requiring to lodge in the said House or Premises*; and do not open his House for the Sale of any Excisable Liquors, or permit or suffer any Drinking therein or on the Premises belonging thereto, or sell or give out the same on Sunday, except for the Accommodation of Lodgers and Travellers; and do maintain good Order and Rule within his House and Premises; and, lastly, do not transgress or commit any Breach of the Conditions of any Permission to sell on a public or special Occasion within his own house or elsewhere. This Certificate to continue in force, upon the Terms and Conditions aforesaid, from the _____ Day of _____, One thousand nine hundred and _____, and until the _____ Day of _____, One thousand nine hundred and _____, and no longer:

"The above Certificate is made out according to the Deliverance in the Book or Register appointed to be kept in the Terms of the Act of Parliament.

"C. D., Clerk."

FORM OF CERTIFICATE FOR PUBLIC-HOUSES.

"At a General Meeting for granting and renewing Certificates for the Sale of Excisable Liquors, held by His Majesty's Justices of the Peace acting in and for the County [or of the Magistrates of the Burgh, as the case may be] of _____, holden at _____, within the said County [or Burgh] on the _____ Day of _____ in the Year One thousand nine hundred and _____. His Majesty's Justices of the Peace acting in and for the said County [or the Magistrates of the said Burgh] assembled at the said Meeting, did authorise and empower A. L., now dwelling at _____, to keep a Public-house at _____, in the Parish of _____ and County [or Burgh] aforesaid, for the Sale in the said House, but not elsewhere, of Victuals, and of Spirits, Wine, Porter, Beer, Cyder, Perry, or other Excisable Liquors [or of Victuals and of Porter, Ale, Beer, Cyder, or Perry] [or of Victuals, Wine, Porter, Ale, Beer, Cyder, or Perry], provided that the said A. L. shall be licensed and empowered to sell such Liquors under the Authority and Permission of any Excise Licence to him in that Behalf granted, on the terms and conditions following: that is to say, that the said A. L. do not fraudulently adulterate the Bread or other Victuals or Liquor sold by him, or sell the same knowing them to have been fraudulently adulterated; and do not use in selling the same any Weight or Measure which is not of the legal Imperial Standard; and do not sell any Groceries or other uncooked Provisions in the said House or Premises, to be consumed elsewhere; and do not knowingly permit any Breach of the Peace, or riotous or disorderly Conduct, within the said House or Premises; and do not permit or suffer Men or Women of notoriously bad Fame, or Girls or Boys, to assemble and meet therein; and do not sell or supply Excisable Liquors to Girls or Boys apparently under Fourteen Years of Age, or to Persons who are in a state of Intoxication; and do not receive or take in, as the Price or for the Supply of Excisable Liquors, any Wearing Apparel, Goods, or Chattels; and do not permit or suffer any unlawful Games therein; and do not keep Open House, or permit or suffer any drinking in any Part of the Premises belonging thereto, or sell or give out therefrom any Liquor, before Eight of the Clock in the Morning, or after such hour at Night, on any Day not earlier than Ten and not later than Eleven, as the Licensing Authorities may direct; and do not open his House for the Sale of any Liquors, or permit or suffer any Drinking therein, or on the Premises thereto belonging, or sell or give out the same, or any other Goods or Commodities on Sunday; and lastly, do not transgress or commit any Breach of the Conditions of any Permission to sell on a public or special Occasion within his own House or elsewhere; and do maintain good Order and Rule within his House and Premises. This Certificate to continue in force, upon the Terms and Conditions aforesaid, from the _____ Day of _____, One thousand nine hundred and _____, and no longer.

"The above Certificate is made out according to the Deliverance in the Book or Register appointed to be kept in Terms of the Act of Parliament.

"C. D., Clerk."

FORM OF CERTIFICATE FOR DEALERS IN EXCISABLE LIQUORS, AND GROCERS AND PROVISION DEALERS TRADING IN EXCISABLE LIQUORS.

"At a General Meeting for granting or renewing Certificates for the Sale of Excisable Liquors, held by His Majesty's Justices of the Peace acting in and for the County [or of the Magistrates of the Burgh, as the case may be] of _____, holden at _____, within the said County [or Burgh] on the _____ Day of _____ in the Year One thousand nine hundred and _____. His Majesty's Justices of the Peace acting in and for the said County [or the Magistrates of the said Burgh] assembled at the said Meeting, did authorise and empower A. L., now dwelling at _____, to keep Premises at _____, in the Parish of _____ and County aforesaid [or Burgh aforesaid] for the Sale therein, but not elsewhere, of Spirits, Wine, Porter, Ale, Beer, Cyder, Perry, or other Excisable Liquors [or of Porter,

Ale, Beer, Cyder, or Perry] [or of Wine, Porter, Ale, Beer, Cyder, or Perry], provided the said A. L. shall be licensed and empowered to sell such Liquors under the Authority and Permission of any Excise Licence to him in that Behalf granted, on the Terms and Conditions following: that is to say, that the said A. L. do not fraudulently adulterate the Liquors sold by him, or sell the same knowing them to have been fraudulently adulterated; and do not use in selling the same any Weight or Measure which is not of the legal Imperial Standard; and do not knowingly permit any Breach of the Peace or riotous or disorderly Conduct within the said Premises; and do not sell or supply Excisable Liquors to Persons who are in a state of Intoxication, or to Girls or Boys apparently under Fourteen Years of Age, and do not traffick in or give any Spirits, Wine, or other Excisable Liquors [or Wine, Porter, Ale, Beer, Cyder, and Perry] [or Porter, Ale, Beer, Cyder, and Perry] to be drunk or consumed on the said Premises, and do not receive or take in, as the Price or for the Supply of Excisable Liquors, any Wearing Apparel, Goods, or Chattels; and do not traffick in or give out therefrom any Liquors before Eight of the Clock in the Morning, or after such hour at Night, of any Day not earlier than Ten and not later than Eleven, as the Licensing Authority may direct; and do not keep open his Premises for Business, or for the Sale of any Liquors or any Goods or Commodities whatsoever, or sell or give out the same on Sunday; and lastly, do maintain good Order and Rule within his Premises. This Certificate to continue in force upon the Terms and Conditions aforesaid, for One Year from the Day of , One thousand nine hundred and .

"The above Certificate is made out according to the Deliverance in the Book or Register appointed to be kept in Terms of the Act of Parliament.

"C. D., Clerk."

Let me now consider what are the chief offences with which a man may be charged in Scotland under the heading of Breach of Certificate. The first is that of **adulteration**. A licence-holder who adulterates the liquor sold by him, or sells it knowing it to be adulterated, is, of course, guilty of an offence against the Adulteration Acts. Further, he is guilty of a breach of his certificate. And this breach of certificate renders him liable to be prosecuted under the Licensing Acts and to be fined thereunder, and also to have his licence forfeited. I would have you note, however, that there is a great deal of difference between the offence specified in the Adulteration Acts and the offence mentioned in the certificate. The certificate only deals with *fraudulent* adulteration, and selling goods knowing them to be fraudulently adulterated. Those of you who have read the chapters on adulteration of food will have noticed that as a rule the knowledge of the seller makes no difference as to his guilt or innocence under the Adulteration Acts. Therefore, a licence-holder who was found to be selling adulterated liquor would be prosecuted under the Adulteration Acts, if it could not be proved that he knew what he was selling; while he would be prosecuted for breach of certificate if he did know what he was selling. The practical result is that the liquor-seller who sells adulterated liquor unwittingly runs no risk of forfeiting his licence, while the liquor-seller who knowingly sells adulterated liquor does run that risk.

I would have you note that the inn- and hotel-keeper and the publican—that is, the on-licence holders in Scotland—are bound by their licences to sell not only good liquor but good food. At least, their certificates bind them that the victuals and bread sold by them in their houses shall be

unadulterated so far as they know. The dealer or grocer or provision seller, however, is not subject to the same condition. He is only bound, by his certificate, to sell good liquor. The quality of any provisions sold by a grocer with an off-licence is left to be dealt with by the Adulteration Acts.

Also note that the holders of licences for inns, hotels, and public-houses **must not sell any groceries** or other uncooked provisions in the said house or premises *to be consumed elsewhere*. The sting of this prohibition is in the last words, "to be consumed elsewhere." There is nothing, of course, to prevent an inn-keeper or publican from supplying people who take meals in his shop with uncooked salads or fruit. The point is that he must not keep what is commonly called a grocery shop or a provision shop. Naturally, this condition does not apply to the off-licences, which are expressly authorised to be granted to the keeper of those very shops.

As to the next offence on the list—that is to say, as to the next condition upon which the licence is granted—it is that the licence-holder shall not **knowingly permit any breach of the peace** or riotous or disorderly conduct within the said house or premises. This is very much like the section of the English Licensing Act commented on on p. 1500. It is to be noticed that the landlord of the public-house, or whoever may be the holder of the licence, is not liable under this head unless he *knowingly* permits the breach of the peace or riotous conduct. The mere fact that the customers of the house on some festive occasion choose to have a free fight, the landlord not being able to prevent them, will not render the landlord liable for having broken the condition of his licence. It should be said, however, that a landlord who does permit disorderly conduct in his house runs a very good chance indeed of having his licence taken then without any more ado.

The offence next in order is that of knowingly permitting or suffering **men or women of notoriously bad fame** to assemble and meet therein. This is not one of the conditions of the grocer's licence. One supposes that the real object of the legislature was to prevent public-houses and hotels degenerating into something much worse. Nothing could be more detrimental to public order than that men and women of notoriously bad fame should meet and drink regularly in a particular public-house, issuing therefrom late at night "fou" both of drink and mischief. These considerations do not apply to a grocer with an off-licence, because by hypothesis there is no drinking on the premises at all.

The worst of this condition is that the words are so very wide and general, not to say vague. For instance, if you take the word "**notoriously**," the question at once arises, To whom is the bad fame of the men and women to be notorious? Have you to prove that the landlord of the house knew the people to be notoriously bad characters? If not, what have you to prove? It was once much debated in a case that came from one of the Scottish burghs as to what was the meaning of this expression "notorious"; and as to what was meant by the landlord permitting or suffering such people to assemble. In the case in question, the publican was charged with

the breach of this particular condition in his licence under the following circumstances :—One evening the public-house in question received a visit from two women. These women went into a room that was being looked after by a barmaid. The publican himself did not enter the room at all ; neither did any person on his behalf except the barmaid. The two women had drink, then went out, afterwards came back again and were supplied with more drink. Now one of the women had been convicted of several offences—in fact, she was one of those unfortunate creatures who apparently cannot keep out of gaol. She was always getting ten days for this and sixty days for that ; nothing very serious as crimes go, but she was a woman of most distinctly bad fame. Her companion had been convicted once only of some trifling offence, and little was known of her except that she had apparently begun to go to the bad, a tendency sufficiently manifest by the fact that she had begun to consort with the woman first mentioned.

Now the barmaid swore that she did not know the gaolbird woman. She said she neither knew her nor anything about her. As to the younger woman, the barmaid said she had known her formerly, because they had worked in a factory together. But of her then mode of life she knew nothing. Unfortunately, the magistrates who tried the case when the publican was charged did not believe the barmaid. They had a very keen idea she did know these two women, or, at least, that she knew all about them. But you see that did not advance the case very much, because the publican did not himself know either that the women had been in and had been served or what their characters were. The police swore that these two women were well known in the neighbourhood of the public-house—that they were of notoriously bad fame. And the magistrates, and after them the High Court in Edinburgh, convicted the publican of permitting his premises to be used by persons of notoriously bad fame. It was said by their lordships that “notoriously” had reference to the district where the licensed house was. It was not necessary for the prosecution to prove that the rumoured bad fame of the people in question had actually reached the ears of the landlord. It was not even necessary for the landlord to know personally that the people came to his house. It was sufficient to convict him of this offence if it should be proved that the persons in question were notorious as being of ill-fame, and that they were allowed by somebody to assemble on the premises.

In a subsequent case it was said that the assembly of these people must have some sort of reference to their bad fame ; which, if it meant anything, meant that unless the people of notoriously bad fame could be proved to have met for some unlawful or improper object, the holder of the licence could not be convicted. I do not think this to be the law. First of all, the condition in the licence does not say anything about the object with which the assembly of all characters is to take place. It simply says that the landlord of the house is not to allow his house to be used as a resort of bad characters. I do not think it matters in the least whether the notoriously bad characters meet for the purpose of drinking, or for the purpose of concocting a robbery, or for any other purpose. But I do think there must be an assembling or meeting

of all characters in the sense that it is some assembly or **meeting by appointment or design**. If by the merest chances in the world it should prove that three eminent pickpockets came into the public-house all at different times and without any preconcerted arrangement to meet there, probably this would not be within the prohibition. Mark, I only say "probably." I am not very sure of it. And if I were the landlord of that house, and found the three gentlemen gathered together on my premises, I should take summary proceedings to evict them.

The next condition is that the person licensed shall **not allow girls or boys to assemble** and meet in his house. This also does not apply to the licensed grocer. "Girls or boys," I presume, means persons under age. If not, I do not know what it means.

You will observe that it is forbidden to sell or supply excisable liquors to *children apparently under fourteen* years of age. This prohibition applies all round. Under it, it was always held that a landlord or grocer was entitled to supply a child under the age of fourteen with liquor if the child was only a messenger for somebody else. You will also notice the use of the word "apparently." The benefit of this is that if the landlord asks a child whether he or she is over fourteen, and is told yes, the landlord goes off scot-free, unless the child is of such tender appearance that the magistrates do not believe that the licence-holder could have imagined the child to have been speaking the truth.

On the other hand, if a landlord supplies a child who is in fact over fourteen years of age, even without inquiry, and even if he believes him to be under fourteen, the landlord is not liable for a breach of condition. You remember that the Sale of Liquor to Children Act applies to Scotland as well as to England. But while the *Sale of Liquor to Children Act* creates an offence very similar to the one just mentioned, yet the breach of the Sale of Liquor to Children Act does not involve the forfeiture of the licence, while a breach of this condition of the licence may involve such a forfeiture. You will see that, by other conditions of the licence, a liquor seller by retail is not allowed to barter with his customers. He may not sell liquor in exchange for wearing apparel, goods, or chattels. Neither may he take such things as *pledges or security* for the price of liquor. The section is plain, and I do not propose to comment on it.

With regard, however, to the following condition, which is only inserted in inn and hotel and public-house licences, there is a very pertinent observation to be made. The condition I refer to is the one that says the holder of the licence **shall not allow unlawful games** in his house. Now I have explained, in dealing with the English law, that an unlawful game is quite a different thing from gambling. A game is not an unlawful game because it is played for money. This I have explained at length on p. 1480. Now there was a case, not of very ancient date, in which the procurator-fiscal of some town in Scotland took action against a publican for permitting to be played upon his premises the game of "dominoes." The domino players were playing for small sums of money. The procurator-fiscal said that this was an unlawful

game, and that the landlord had therefore broken the condition of his licence. The Court of Justiciary, however, summarily dismissed the prosecution; and from the language used by the judges, it appears that the condition referred to is not worth the paper it is printed on. It was probably inserted by some ignorant Southron, who was thinking of his own country, or else he did not know the difference between gaming and an unlawful game. If you refer to the observations upon the English law of licensing, you will see that certain games were made unlawful in England by ancient Acts of Parliament. Now these Acts do not apply to that part of the kingdom called North Britain. And by the Common Law of Scotland there is no unlawful game. Therefore a Scottish publican cannot be convicted of permitting unlawful games on his premises, because every kind of game is lawful. I think it very likely that the people who drew up the condition intended to forbid playing at games for money or for stakes. But you know what road it is that is paved with good intentions. This is another paving-stone. There is nothing in the Acts relating to public-houses in Scotland; neither is there anything in the conditions on the licence to prevent gaming taking place in public-houses.

The only way in which I can see that a licence-holder who permitted gaming might possibly be convicted of a breach of certificate, would be under the last clause of the licensing conditions, which runs, "And do **maintain good order and rule** within his house and premises."

You will be particular to notice that **under the Betting Acts** a publican who allows his premises to be used for the purpose described on pp. 1481-3 is, or may be, liable to a penalty under the Betting Acts. Clearly, if he permits anybody to use his house as a betting house, he is assisting that person to break the law. Therefore, I should say, he is not maintaining good order and rule in his house. But the Betting Act only applies to betting. It does not apply, as you observe, to a game played in the house for money—as, for instance, a game of dominoes previously mentioned. I do not know whether, if the publican in question had been charged with the offence of not maintaining good order in his house, he might have been convicted under this head.

On the whole, I should say he would not have been convicted. The most frequent source of prosecutions, and the most usual ground for the forfeiture of licences, is to be found in the breach of the **prohibited hours** condition. The words used are, "Keep open house or permit or suffer any drinking . . . or sell or give out therefrom any liquor" during closing-time, including Sunday. The Scottish judges have taken very much the same view of the offence of selling during prohibited hours that the English judges have taken. Of course, the police have to be strict in this matter. They cannot possibly wink at breaches of the law in the present state of public opinion. And if you get a bench of magistrates—this applies more especially to a burgh—who are inclined by their politics to regard all traffic in drink with disfavour, you will very often find the police trying to enforce more than the law. It is usual to describe the offence of keeping open during prohibited hours as that of "**keeping open house.**"

But a bench of magistrates once got hold of the notion—where they

got it from I do not know—that a publican was guilty of “keeping open house” if he had his door open for any purpose whatever during the hours that he is required by the Licensing Acts to close his premises. In one case a publican had his door open before 8 o'clock in the morning for the purpose of having the steps washed, or something of that kind. He was summoned, and actually convicted of “keeping open house.” He appealed to Edinburgh, however, and there it was solemnly decided that a publican who had his door open during prohibited hours for the purpose of *bonâ fide* cleaning his premises was not guilty of a breach of his certificate.

The condition must be read reasonably, and there is no offence of “keeping open house” in the mere fact of a publican opening one of his doors. If the law meant that the public-house was to be hermetically sealed during prohibited hours, what is to become of the ventilation of the house? For if a publican may not open a door for the purpose of swilling his steps, upon what principle is he to be allowed to open a window to let in fresh air? Therefore, when a policeman saw two men coming out of the public-house at 20 minutes past 11 one night, but could not prove at what hour the men went in, nor for what purpose they went in or remained in—merely that they were seen coming out at 11.20, it was held that this was not evidence of “keeping open house.” I mean, that it was not by itself sufficient evidence. You see, the men might have been guests of someone lodging in the house.

There was another charge once brought against an hotel-keeper (or publican) named Boyd, of Irvine. This man was charged with “**giving out liquors**, namely a gill of whiskey,” to a certain ostler during prohibited hours. The facts were that certain customers of Mr. Boyd, who had been spending the evening at his place, went to the station and missed the last train. They decided to go back to the house of Boyd and try to get a carriage to take them home. So they went back, and arrived at the hotel at about half-past ten. The landlord did not turn them into the street at 11 o'clock, but kept them there what time he sent to another hotel for a carriage. The carriage came after 11 o'clock. It was driven by an ostler. Boyd gave the ostler a gill of whiskey to keep the cold out. When I use the word “gave,” I intend to imply that the whiskey was a gift. The police brought the charge above mentioned against Mr. Boyd in respect of this gift. The Justiciary Court held that on the facts above mentioned the landlord had committed no offence, and had not broken the condition in his licence which forbids the giving out of liquor during prohibited hours. Apparently the “giving out” prohibited by the condition means a sale or some transaction equivalent to a sale.

The same interpretation has been put on that clause in a **grocer's licence** which forbids the grocer from *giving any spirits, etc., to be drunk or consumed on the premises*. There was a case where a grocer had a customer who called in to purchase a gallon of whiskey. The customer asked to be allowed to try some of the whiskey as a sample. The grocer permitted the test. It was decided that this was not giving the liquor to be consumed

on the premises within the meaning of the condition. For my part, I take the liberty of saying that this decision is rather doubtful law. The reason I say so is, because the giving of a sample to be tested in anticipation of a purchase by the customer is a business transaction.

On the other hand, if it is **a friendly transaction**, and there is no consideration for the gift, the grocer goes free. For instance, a woman who kept a grocer's shop asked two fishermen into her kitchen behind the shop. There she gave to each of them a glass of ale by way of a treat. The police charged the woman with committing a breach of the condition in her licence; and the Justiciary Court dismissed the charge because the whole thing was a friendly matter and not a business transaction.

On the other hand, the Court in Edinburgh **upheld a conviction of a grocer** under the following circumstances: A customer went into the grocer's shop to settle an account. I daresay he was very welcome. He took a friend with him, and said to the grocer, "Will you give my friend a glass of whiskey?" The grocer complied, and presented a glass of whiskey, free of charge, to the friend. It was held that this was a "giving" of spirits to be consumed on the premises in breach of the condition of the licence.

You will observe that *the grocer and the publican* are obliged by the conditions of their licence absolutely to close during *prohibited hours*. This extends also to Sundays; and when I speak of prohibited hours I include Sundays. But you will see, if you refer to the form of certificate for inns and hotels, that the inn-keeper or hotel-keeper is allowed to serve refreshments to **travellers or to persons requiring to lodge** in his house at any time.

The traveller is not so defined in the way he is by the English Licensing Acts. A *traveller* by the Scottish licensing law is simply a person who is on a journey. I mean by this, that he is either actually on his way from the beginning place of his journey to the termination thereof or that he has arrived at the termination thereof. It has been decided that a railway guard who has travelled 100 miles by train in the course of his duty is a traveller.

But if a man has reached the end of his journey in such a way that he has ceased to be a traveller, he does not come within the exception. Thus there was a man who had been abroad—Scotsmen wander everywhere—and had returned to his home at Lerwick by boat early one Sunday morning. He went home first and slept for some hours; then he sallied forth, and having picked up a thirst somewhere, hied him to an hotel. Before being let in, the waiter asked where he came from. He replied that he had arrived at Lerwick by boat that morning. The waiter asked no more questions, but served the wanderer with drink. A charge of selling liquor during prohibited hours was brought against the hotel-keeper; and it was decided that the waiter had not made **sufficient inquiries**. It was further decided that the customer had ceased to be a traveller when he went home to sleep, though he might have been a traveller if he had come straight from the boat to the hotel.

There was a case in which a publican (I mean the holder of a publican's licence) was seen to take a bottle from a man some distance outside the

public-house one Sunday. The publican went into his house, filled the bottle with whiskey, and took it out to the customer. The publican was convicted of keeping open his premises during prohibited hours.

Not only may travellers be served during prohibited hours at an inn or hotel, but guests also. By guests I mean **people lodging in the house**—perhaps we had better call them lodgers. Lodgers may be served; and it is no offence for the lodgers to have guests during prohibited hours, and for these guests to consume liquor, provided that liquor is paid for by the host. A man named Flack kept a railway hotel at North Berwick; amongst others he had two lodgers who had hired a private sitting-room. One evening these gentlemen entertained two friends who were staying elsewhere in the neighbourhood. At about half-past twelve at night, a policeman who was on the watch saw the waiter bring into the private room a pint of brandy. This brandy was put down in the bill against the two lodgers. It was consumed by the lodgers and their friends. The procurator-fiscal of Berwick brought proceedings against Flack for “keeping open house” and selling or giving out to one of these strangers a pint of brandy during prohibited hours. It was held that there was no offence. The guests of lodgers could not be turned out at closing-time. And when the counsel for the procurator-fiscal urged that if this was the law, there was nothing to prevent a person hiring a private room at an hotel and then inviting half the neighbourhood and holding a carouse there. Lord Craighill observed that it would be time enough to consider such a case when it actually arose.

There is one very marked difference to law as to travellers in England and in Scotland. As I have told you, by English law the *bonâ fide* traveller can only be supplied with such liquor as he requires to be consumed on the premises. The law of Scotland is quite different. A traveller may be supplied with liquor to take away with him, such liquor to be a reasonable quantity to be used by him on his journey. As to the **responsibility of the licence-holder for his servant's acts**, the law is very much the same in Scotland as it is in England. If a servant acts within the general scope of his authority and in doing so commits an offence, the master is liable for it. It makes no difference that the servant had been given instructions to the contrary. For example, as to the condition, in inn and hotel and public-house licences, that the licensee shall not *sell or supply liquor to persons in a state of intoxication*. Here, if a servant with a general authority to sell liquor (for instance, a barmaid) sells to an intoxicated person, her master must answer for it; and it will not avail him to say he gave instructions to her and to all his servants never to serve drunken people.

But if the servant (to use the phrase spoken in another connection by a distinguished English judge) “goes off on a frolic of his own,” and in doing so does something contrary to the conditions of the licence, the master cannot be made liable for that. Take the case of a barman who was left in charge of a public-house by his master, and who was found after 11 o'clock at night drinking with three men in a room of the public-house.

It appeared that the barman had sold a bottle of whiskey to the three men just before 11 o'clock. Then, under the impression that if he sold no more liquor to them he was all right, he permitted them to stay on the premises after closing hours, and joined them in drinking the whiskey. Here the publican was held not liable, because the servant had done what he had done in order to secure to himself the benefit of a share in the bottle of whiskey.

The next case is one of an hotel-keeper who had a servant whom we will call Janet. One Sunday the hotel-keeper went away leaving nobody but Janet in the house; before he went he locked the place up and told Janet not to unlock any door except there should come thither a traveller or a person who desired to lodge. Moreover, he cautioned her to be particularly careful not to supply any liquor to anybody except such a traveller or guest during his absence. Janet promised. But when the cat's away—you know the rest. Janet had an admirer who thought this would be a favourable opportunity for him to pay court to his charmer. So when the master's back was turned, the young man made his appearance. Janet let him in. Now it appears that this was a thirsty admirer. He began to worry Janet to let him have a drink, and in the end Janet gave him one. She was an honest girl, however, and made him pay for the liquor—putting the money into the till. A policeman was watching, unfortunately, and the hotel-keeper was summoned for keeping open during prohibited hours and selling liquor to somebody not a traveller or a lodger. When the facts came out, it was decided that the publican could not be held responsible for Janet's misdemeanour, as it was "a frolic of her own."

I ought to tell you that when a charge is made of breach of certificate, the charge ought **to be stated as definitely as possible**. Thus, if a man is charged with "keeping open house" or selling or giving out liquor, the magistrate cannot simply find him guilty. The Scotch law is, and always has been, very particular that charges of criminal offences should be stated precisely; and an alternative is not sufficiently precise. To put it another way, if a man is charged with "keeping open house or selling or giving out liquor," and the magistrate says "I find you guilty," how in the world is the man to know whether he has been found guilty of "keeping open house" or of "selling"? So also if a man is accused of selling liquor to a person during prohibited hours, if the person is known to the prosecutor his name must be given. Only if the prosecutor does not know the name of the person who was supplied can he avoid giving his name. He must then charge the publican with supplying or giving certain liquor to one whose name is unknown to the prosecutor.

The High Court will not readily interfere with the discretion of a magistrate as to the punishment to be inflicted. It seems clear, however, that a magistrate cannot order a publican, etc., convicted of an offence against the conditions of his certificate, to be imprisoned if he does not immediately pay the fine imposed. Proper time must be given to the defendant to procure the money to pay the fine. It seems clear, moreover, that magistrates can order

a licence to be forfeited for a first conviction of any offence against the conditions of the licence. This, you observe, is very much stricter than the English licensing law. There is no fuss about three endorsements on the licence, or anything of that sort. You see, the theory of licence-holding in Scotland is that the certificate of the justices is only granted upon condition that the holder thereof carries out the various conditions contained in that licence. Therefore, if he breaks any of those conditions, he is breaking his bargain with the public authorities, and cannot complain if he loses the privilege, which was what he got for his terms to keep the conditions.

On the other hand, the High Court has power, under its Common Law jurisdiction, to interfere with any sentences that are *manifestly oppressive*; but, as I have said, they are extremely reluctant in licensing cases to interfere with what has been done by the magistrates in the lower Court.

As in England, so also in Scotland, the **landlord may eject a disorderly person**. This right exists with regard to every shop, house, premises, or place licensed for the sale of intoxicating liquor by retail—this, too, applies to off-licences as well as on-licences. The people who may be ejected are those who are riotous, quarrelsome, or disorderly. First of all, the landlord or manager or any servant may request a man to go; or the landlord may call in a constable, and the constable may request the objectionable person to depart. If that person does not go, the constable may take him into custody then and there, and take him to the police-station. What becomes of him afterwards is no concern of ours in this chapter: all we are concerned with is what is to take place on the licensed premises. Constables are authorised and empowered to assist in expelling riotous, quarrelsome, or disorderly persons refusing to quit the premises at the hour of closing. There seems, therefore, not to be the same power, by express enactment, to turn out a person who is behaving himself at the time but whose presence on the premises may be a danger to the landlord's licence. In my opinion, however, the licence-holder has a perfect right to turn out of his house prostitutes, reputed thieves, and persons of notoriously bad character who come there. It is quite obvious that he must have the power to do this, or else you have the law in the state that he may be punished for something he cannot well help.

PART II. MISCELLANEOUS TRADERS.

CHAPTER I.

SLAUGHTER-HOUSES AND KNACKERS' YARDS.

Difference between slaughter-house and knacker's yard—Both to be licensed—Why the trades are restricted—No slaughter-house licence in rural district—Borough and District Councils—No new SLAUGHTER-HOUSE to be put up without licence—Buildings already erected—Premises used before 1875—Where rural district receives urban powers—Or becomes urban district—Altering old slaughter-house—How far a new building—Question is how far premises substantially the same—The butcher and the Corporation—Enlargement—Registration of slaughter-houses—Regulations for the government thereof—Bye-laws—Municipal slaughter-houses—Licence not personal—Attaches to the premises—Not to the person—Inspection of slaughter-houses—Seizure of unsound carcasses—KNACKERS' YARDS—To be licensed—Parliamentary language—Licence personal and to the premises—Licence from sanitary authority to erect—This not a "knacker's licence"—Registration in urban districts—What happens when rural district becomes urban—Business may be carried on by widow or executors—How to apply for licence—Certificate of fitness—When licence may be forfeited—Cutting horse's hair—Time for slaughtering—Knacker must not use animals sent to be killed—Must keep register—SCOTLAND—Licence of local authority required—What is "using premises as a slaughter-house"?—Evidence of breach of the law—Applications for licences to be advertised—Public may oppose the grant—Without notice—Opposing renewals—With notice—Appeal from refusal to grant licence for old premises—*In burghs*—Place used for depositing carcasses without a licence—Carrying carcass uncovered—Slaughterer's licence—Bye-laws—Forfeiture of licence.

THE difference between a slaughter-house and a knacker's yard is that the slaughter-house is a place for the killing of animals for use as human food. The knacker's yard is a place where animals are killed for some purpose other than human food—generally to get them out of the way. A knacker's yard is not by any means confined to a place where horses are slaughtered. The horrid trade of the knacker embraces every kind of beast and animal, provided the beast be not killed to be sold as food. Now, both slaughter-houses and knackers' yards have been ordered to be licensed.

The reason is that the trade of a cattle-slaughterer and the trade of a knacker are both apt to become offensive. Moreover, the kind of place in which meat is kept immediately after it ceases to be live meat has a very great deal to do with the fitness of that meat for food. And with the double purpose of preventing anyone from putting up slaughter-houses for cattle in unseemly places, and also of looking after the sanitary part of the business, Borough and District Councils have been given considerable authority with regard to them. I should say that IN ENGLAND this authority can only be exercised by the council of an urban district, or a rural district with urban powers. In a rural district pure and simple, it appears, a Rural District Council has no power to regulate slaughter-houses. All urban sanitary

authorities are empowered to construct slaughter-houses at their own expense for the use of the butchers of the town. If this be done, such slaughter-houses can be let out to all persons wishing to use them. I ought to say that many boroughs have special powers relating to these premises. Let me first deal with the question of

SLAUGHTER-HOUSES.

To begin with, **no new slaughter-house can be erected in an urban district** unless and until the urban sanitary authorities have licensed the same. If, however, you have put up a building which, perhaps, you intend to use for some other purpose, and you decide to turn it into a slaughter-house, you must get a licence from the urban sanitary authority to be allowed to use the building as a slaughter-house.

Now, *no licence whatever is required* in respect of premises which were used as a slaughter-house before the year 1875, or before the district became an urban sanitary district. Suppose, that is to say, you have had a building that you have been in the habit of using as a slaughter-house for some time in connection with a butcher's business that you carry on. Your slaughter-house is situated in the district of a rural sanitary authority. But the district grows, and one fine day the rural sanitary authority is converted into an urban sanitary authority—as, for instance, it may be converted into a municipal borough. The house which you have been in the habit of using as a slaughter-house requires another licence from the urban sanitary authority.

Now **suppose you should alter your old slaughter-house**, or suppose it should begin to fall down, and you rebuild it and improve it, can you then be made to take out a licence as for a new slaughter-house? Such a case did once arise in the thriving municipality of Birmingham, where, a great many years ago, one Adkins had an old slaughter-house, which he partly rebuilt. He also took in a little extra space which had formerly been a yard. The Birmingham Corporation claimed that Adkins's slaughter-house, as it stood after the alteration, was not the same slaughter-house that had previously existed. But the Court held that if the place is substantially the same, mere alteration does not constitute new premises. So also you may use an old slaughter-house, formerly used for pigs, to slaughter bullocks in without a licence.

All slaughter-houses, however, whether new or old, have to be **registered at the office** of the Borough or District Council; and anybody who uses a place for the slaughter of cattle or animals of any description for meat when it is not registered is liable to a penalty of £5, and 10s. a day so long as his premises remain unregistered. If your district is converted into an urban sanitary district, you have three months within which to register your slaughter-house. The urban sanitary authority may also make bye-laws for the **regulation of slaughter-houses** that are in their district; or, as I have said before, they may provide municipal slaughter-houses. Now a licence must be obtained according to the bye-laws made in that behalf by the urban

sanitary authority—that is, the Borough or Urban District Council may make regulations as to the way in which licences are to be applied for, and the conditions that must be fulfilled before such licences will be granted. They may also make regulations for the ordering of slaughter-houses. Thus the bye-laws of most Corporations on this subject fix a time in the morning later than which cattle may not be slaughtered. Such bye-laws generally provide for the cleansing of slaughter-houses, which must be at least once every twenty-four hours; such local bye-laws may also deal with the water supply of such houses; and these bye-laws must be observed by all parties.

I need hardly say, perhaps, that the local bye-laws also fix, as a rule, **the plan on which slaughter-houses are to be built.** The penalty for the breach of a bye-law is fixed by that bye-law. No new slaughter-house may be used or occupied by anyone unless it has been licensed. I want you to observe that there is a great difference between a slaughter-house licence and, for instance, a public-house licence. In the case of a public-house licence, the licence refers equally to the premises and to the person. But a slaughter-house licence is quite different; a slaughter-house licence is **a licence for a place**, and so long as the place is licensed there is no necessity for a person who slaughters there to be licensed also. That is to say, if I have a licensed slaughter-house, and I let you use it, you may use it without fear of a penalty.

Any person killing or dressing cattle contrary to the provisions above-recited is liable to a *maximum* fine of £5, and 10s. for every day during which the offence continues. In addition, the licence may be suspended for a period not exceeding two months. On a second offence, not only may the same fine be inflicted but the premises also become disqualified.

Inspectors are authorised to inspect all slaughter-houses, and to seize and carry away any carcase or cattle, or parts of carcasses, which on examination appear to be unsound. There is a £10 penalty imposed on the person who was the owner or had the custody of the carcasses seized. This does not really carry us much further than the law we have already had upon the subject of unsound food (*see* p. 1308).

KNACKERS' YARDS.

Every knacker must have his yard licensed. This rule dates as far back as 1786. By an Act of that date it was provided that anybody who kept a knacker's yard should be licensed. At that time it was by the Justices of the Peace; now it is by the Borough or District Council—that is to say, the sanitary authority. The licence lasts for a year, and is, unlike a slaughter-house licence, **both personal and applicable to the premises.** That is to say, not anyone and everyone may use a knacker's yard for the purpose of slaughtering horses and cattle not for meat, but only the person who obtained the licence and his servants. I want you to be careful to distinguish between this licence and the other. Just as in the case of slaughter-houses, anyone who is going to erect or start a new knacker's yard within an urban sanitary district must apply for permission to erect the

same. And it is an offence against the Public Health Act for anyone to use any building or premises whatever (in an urban district) as a knacker's yard without having previously obtained the licence and consent of the sanitary authority.

But the knacker's licence is **not merely a licence to erect premises**, it is a licence required in any part of the country, urban or rural, by everybody who keeps such a place. In urban districts also the licensed premises must be registered at the office of the urban sanitary authority, and anyone who neglects to register may be fined £5, as well as 10s. a day during the time that the non-registration continues. If a rural sanitary district becomes an urban sanitary district, holders of existing licences must register themselves within three months after the conversion from rural to urban, provided they receive a week's notice from the sanitary authority.

Although a licence is personal to the licence-holder, in one event the business of knacker may be carried on by someone other than he. If the knacker should die during the currency of his licence his widow, or executor, or administrator, may carry on the business until the licence expires. And *the licence expires* at the end of a year from the time it was granted.

In order to obtain a licence to carry on the business of a knacker, the applicant must produce to the licensing authority a **certificate of fitness** signed and sealed by the minister of the parish and the church wardens or overseers, or by the minister and two substantial householders of the parish where he dwells. It is a condition on every licence that the licensee must keep over his door or on the gate of his yard, in large and legible characters, a notice as follows: "John Jones, licensed to slaughter horses pursuant to an Act passed in the 26th year of his Majesty King George III." The penalty for not keeping this painted up in proper style is £5, and 5s. a day during every day of the continuance of the default. Moreover, the licence may be forfeited on complaint made to the Council.

Knackers have to observe certain rules. I leave out of count for a moment the rules laid down by the local authorities as to the hours when slaughtering may take place and so on. I mean that there are other rules imposed by Act of Parliament on all matters in all places, quite independently of local regulations and bye-laws.

Every horse or other animal sent to the knacker to be slaughtered must forthwith have **the hair on its neck cut off**. I presume it was intended to lay down some rule so as to be easily able to distinguish between horses that are on a knacker's premises to be used as beasts of burden and horses that have been sent there for slaughter. In the next place, every horse or beast sent to be slaughtered must be slaughtered *within three days* of its arrival; and until it is killed it must be supplied with sufficient water and food of a wholesome kind. The penalty for not cutting the horse's hair, for not killing it soon enough, or for not supplying it with wholesome food and water is £5 for each offence.

The statute emphatically says that horses or cattle sent to a knacker to be slaughtered *must not be used*. Thus, if a knacker buys a horse to be

slaughtered, he must not use it or allow it to be used for drawing a cart or anything of that kind. If he offends against this enactment he will be liable to a penalty of 40s. a day for every day during which the animal is used.

Last of all, *the knacker must keep a register* of all the animals which come into his hand for destruction. In this book he must record the colour, marks, and gender of the animal so as clearly to distinguish and identify it. And if any constable should come in at a reasonable hour and ask for the book to be produced, it must be produced. So also any magistrate may come in and compel its production, or may order the knacker to take his book to some place where the magistrate desires it to be produced to him. Failure to keep a book, failure to keep it properly, failure to produce it if required, each involve a penalty of 40s.

It should also be noticed that a knacker may not exercise or use the trade of a horse-dealer.

IN SCOTLAND

slaughter-houses and knackers' yards are under very much the same restrictions as in England. Nobody is allowed to carry on the business as a slaughterer or a knacker without **a licence from the local authority**. Neither can anybody use premises as a slaughter-house or knacker's yard without a licence. The licences are obtainable from the Town Council or Commissioners in a burgh, from the District Committee of a district outside the burgh, or from the County Council when the county is not divided into districts. The fee payable for such a licence is 5s.—the local authority may charge less, but not more. "Using premises as a slaughter-house" means habitually using them. A case was dismissed where a labouring man who had skill in killing pigs slew a pig "at an orra time" in his garden—just to oblige a neighbour. It was held that he was not using his garden as a slaughter-house.

There is a rather curious provision in the Public Health (Scotland) Act which says that the fact that cattle or horses have been taken into unlicensed premises shall be *prima facie* evidence that an offence under this section has been committed. I suppose by that is meant that if a horse slaughterer takes horses into unlicensed premises, that is evidence that he was using those premises as a knacker's yard. The licence is a yearly one, good for twelve months—except that where the local authority has fixed one day on which knackers' and slaughterers' licences shall expire within the district, by way of obtaining uniformity, the licences do expire on that date, and thenceforth all licences run to that same day every year.

When a licence is first applied for—by which I mean a licence for new premises not hitherto licensed—the local authority is **bound to advertise**. The advertisement is to appear at least twenty-one days before the application is to be heard. It may appear in one or more local newspapers, or by the posting of handbills in the locality. The reason for giving public notice is because any person interested in the matter is entitled to come before the

local authority and oppose the grant of the licence. In the case of a new licence the opposer is not bound to give any notice that he intends to come and oppose. But if I were a man about to take an objection to the granting of a slaughterer's licence, I should give notice to the applicant or his law agent, so that he could not obtain the pity of the tribunal by saying that the objection had been suddenly sprung upon him.

There is no necessity for the local authorities to advertise the fact that a renewal of a licence is about to be applied for. Anybody who is interested in the matter has a perfect right, however, to attend the meeting and **oppose the renewal** of a licence. But he cannot be heard in opposition unless he has given to the applicant notice of the objection—by which, I think, is meant not only notice that he intends to object, but also notice of the substance of his objection. If an opposer has not given his notice of objection in time, he may still attend before the local authority and state that he desires to object. If the Council or Committee think it would be right to do so, they may adjourn the meeting so as to give the opposer time to serve a seven-days' notice of objection. They may also send a notice to the applicant that he must appear before them at the adjourned meeting.

I ought to say **that there is in certain cases a right of appeal.** When a licence is refused for premises where the business of a slaughterer or knacker was being carried on before the 1st of June, 1898, and the local authority refuses to grant a licence for that place, the applicant can carry the matter further. If the local authority in question is a District Committee, he appeals to the County Council, and if they refuse then he appeals to the Local Government Board. If the local authority who refuses him in the first instance should be the Town Council, or Commissioners of a burgh, or a County Council, he appeals directly to the Local Government Board. This appeal is done by writing a petition to the secretary of the Local Government Board, setting out the facts as they have occurred, complaining of the decision of the local authority, and asking for redress.

The local authority has power to inspect all slaughter-houses and knackers' yards. They may enter such a place at any hour by day, or at any other hour when business is in progress or is usually carried on therein. This is in order to find out whether anything contrary to law is being done.

IN SCOTTISH BURGHS there is a proviso as to knackers' yards over and above the law just laid down. Not only is it not lawful to use within a burgh any place for the slaughtering of horses, but it is unlawful to use a place for **depositing the carcasses of horses without a licence.** The licence is a licence for the place and not for the person. In a very interesting case which was heard by the Court of Justiciary it was contended that a mere temporary deposit of a horse's carcase in unlicensed premises was not a violation of the Burgh Police Act. Simpsons, Limited, were manure manufacturers. In the way of their business they habitually bought dead and moribund horses to make into manure. Their manufactory was at Douglasbrae, near the burgh of Keith, but just outside the burgh boundaries; and it was licensed as a knacker's yard. Within the burgh of Keith, Simpsons, Limited, had another

set of premises. They did not use these as a place for slaughtering horses, nor as a place for storing carcases. But one day a carter of theirs was sent on a long journey of twenty-three miles to bring in the carcase of a horse. The carter in question arrived in Keith at 8 p.m.; and as his horses were very tired, and he himself was weary enough, he decided not to take the dead horse up to Douglasbrae that night. He therefore led his waggon to the Keith premises of his employers, and left it there with the carcase in it. At 7 the next morning the carter was up and away; but not early enough to escape the eye of the public authorities of Keith. Messrs. Simpsons, Limited, were served with a summons, charging them with having used their premises at Keith as a place of deposit for the carcases of horses. The case eventually went up to Edinburgh, and it was there decided that the words of the Act meant something in the nature of a regular place of deposit—not merely a place where the carcase of a horse might be deposited casually, or at an odd time for a special reason.

There is one other provision of interest to knackers in the Burgh Police Act. By it knackers and others are prohibited from carrying within the burgh any dead horse unless in a covered cart or waggon, or unless the dead carcase be sufficiently covered. The penalty is one of £10.

As to slaughter-houses in Scottish burghs, it is provided that no place shall be used or occupied unless and until a licence has been granted by the Council or Commissioners. This licence may either be a licence allowing the slaughterer to erect a house, or it may be a licence allowing him to use a place already erected. The penalty for using an unlicensed slaughter-house is £5 down, and £5 a day so long as the offence continues. These amounts are the *maxima*.

The sanitary authorities are empowered to make from time to time bye-laws for licensing, regulating, registering, and inspecting slaughter-houses; also for preventing cruelty in slaughter-houses; for keeping the same clean; for removing filth at least once every twenty-four hours; for having them properly floored, drained, and provided with water. The bye-laws naturally differ a good deal in different burghs. They usually impose a penalty for each violation of any of the regulations. This penalty also varies in different burghs. It cannot exceed £5, and 10s. a day during the continuation of the offence. Besides any provisions which may be made by the bye-laws of a burgh, the medical officer of health is obliged by a statute to report at least twice a year on the sanitary condition of all slaughter-houses licensed by the Council or Commissioners. To enable him to do this properly, he, as well as the sanitary inspector, or any other person specially appointed by the Council or Commissioners, has right of access to all slaughter-houses at all reasonable times.

A magistrate who convicts in a burgh for killing or dressing any cattle contrary to the statute, or contrary to the burgh bye-laws, may not only inflict a fine, but may suspend the licence of the offender for a period not exceeding two months. At a second conviction the magistrate may cancel the licence altogether; and a slaughterer who has once forfeited his licence may be refused a new one by the local authority.

CHAPTER II

DISEASED ANIMALS AND THE IMPORTATION OF ANIMALS.

What are animals?—Powers of Board of Agriculture to extend operation of Acts—Meaning of "cattle"—Objects of Contagious Diseases (Animals) Acts—Powers of local authorities—Powers of the London Corporation—When an animal is diseased—Only certain diseases included—List of them—Duty of person in possession of diseased animal—Isolation—Notification—Meaning of isolation—To whom notice to be given—Isolation of infected place—Notice from inspector of infection—Its effect on neighbouring lands and buildings—Cattle plague—All lands within a mile of the disease—Board of Agriculture to be informed immediately—And local authority—The Board to prescribe limits of infected place—The Board may quash the notices—How to act on receipt of notice of infection—The powers of the Board are absolute—An infected area—Difference between "place" and "area"—Animals with cattle plague to be slaughtered—Suspected animals may be slaughtered—What are suspected animals?—Difference between animals in a "place" and an "area"—The public pay for slaughtered animals—Difference where animal diseased or only suspected—The limits of compensation—Diseases other than cattle plague—Government and local inspectors—Pleuro-pneumonia—Foot-and-mouth disease—Where these diseases have existed—Adjacent occupiers—How a place becomes an "infected place"—Local authority to make inquiries—Farms in different districts—Local authority to determine existence of disease—Subject to Board of Agriculture—Fifty-six days' limit in pleuro-pneumonia—Fourteen to twenty-eight days in foot-and-mouth disease—Movement into and out of infected places and areas—Cattle to be kept out of place infected with pleuro-pneumonia—Cattle not to be moved out of such place—Board of Agriculture may grant licence—Local authority may grant certain licences—But not others—Movement in case of foot-and-mouth disease—Rules apply to all animals—Pleuro-pneumonia rules apply only to cattle—Circle of infection—Notice to be put up on premises—Slaughtering diseased animals—And suspected animals—Cattle killed for pleuro-pneumonia—A discretion in foot-and-mouth cases—Slaughter of animals exposed to infection—No limit—Swine having swine fever—Suspect swine—Discretion of the Board—Difference between diseased and suspected animals—No limit to value of pig—Disposal of the carcase—Proceeds of sale—Animals insured—How compensation may be lost—Misconduct of owner—Moving of swine infected with swine fever—Not without written authority—The duties of pig tenders—Animals reserved for observation—Compensation payable—Animals may be buried in owner's ground—Animals found diseased in a market—Or in transit—Or in lair—Or in foreign animals wharf—While in slaughter-house—While on common land—While not in possession of the owner—Animals may be seized and kept isolated—Place where found an infected place—Market, etc.—Where diseased animal has been to be disinfected—Diseased or suspected animal not to be exposed for sale—Railway company not to carry diseased or suspected cattle—Applies to all modes of carriage inland—Regulations to prevent contagion spreading—Disinfection of trucks, etc.—Litter, broken fodder, and dung not to be moved—Rules in cases of different diseases—Power of inspector to order detention of pigs—After such notice pig not to be moved—Certain articles to be disinfected—Certain things to be destroyed—Valuation for compensation—Difference in Scotland—Disputing the Board's value—How arbitrators appointed—The expenses of valuation—Foreign animals—Prevention of importation of disease—Foreign infected countries—What is a country?—Ports of landing—Movements of foreign animals—Special

wharves—No animal to be taken out of the wharf alive—Exceptions—Animals for exhibition—Quarantine—Rules for landing foreign animals—Powers of officials—What officials may act—Police and inspectors—Arrest and detention on suspicion—Stopping cattle on the move—Stopping suspected persons—Searching carts, etc.—Obstruction of officer—Inspector's special powers—Entering land or premises—Entering on suspicion—How the power limited—Must give reasons for entering—In writing—Pains and penalties—Difference of punishment for certain classes of offences—When imprisonment may be awarded.

IT is just as well to have our definitions first. When we are dealing with the statutes referring to diseased animals, the word "**animals**" means cattle, sheep, and goats, and all other ruminating animals and swine. Power has been given to the Board of Agriculture to make orders extending any of the powers conferred upon them to any kind of four-footed beasts, in addition to the kinds of animals mentioned. They have, in fact, made orders bringing dogs under the Contagious Diseases of Animals Act, the object of these orders being to check the spread of hydrophobia. I shall not deal at any length with the hydrophobia orders, because this volume is a volume for business men. I shall therefore confine my remarks rather to the subject of the Acts as they affect people in trade and business—graziers, butchers, farmers, and the like. "**Cattle**" includes bulls, cows, oxen, heifers, and calves.

The enforcement of the Contagious Diseases of Animals Act is in the hands of the local authorities. In England the local authority is the Borough Council in boroughs and the County Council in counties; the Lord Mayor, Aldermen, and Common Council of the City of London for the City. But the City authorities only have power to deal with foreign animals—no doubt because they are the port sanitary authority. Even within the limits of the City, all the law relating to diseased animals is to be administered by the London County Council, except the provisions as to foreign animals.

Any butcher, or farmer, or grazier may find himself **in possession of a diseased animal**, and that not by his own fault or neglect. An animal is diseased, within the meaning of the Act, when it has one of the following diseases: Cattle plague—that is to say, rinderpest, or the disease commonly called cattle plague; anthrax, contagious pleuro-pneumonia, foot-and-mouth disease, sheep-pox, sheep-scab, swine fever. Swine fever is, I believe, properly called "typhoid fever of swine"; and it is known in various parts of the country as "soldier purples," "red disease," "hog cholera," and "swine plague."

Every person who has in his possession or under his charge an animal affected with cattle plague must first of all isolate the beast, and then notify the authorities. Isolation means keeping it separate from animals not so affected. **Notice must be given to a constable** of the Police Force for the Police area wherein the animal so affected is. The idea is promptitude. Notice must be given with all practicable speed. The police-constable does nothing himself, except give information of the notice to the inspector or other person who has been appointed by the Board of Agriculture.

Besides this what I may call individual precaution, there are certain rather more wholesale precautions that may be taken when the inspector appears on the scene. An inspector has power to make inquiries as to the existence of cattle plague; and if it appears to him that cattle plague exists in a cow-shed, field, or other place, or that it has existed there within ten days, proceedings are taken to isolate the **infected place**.

The first thing the inspector must do is to make and sign a declaration in which he declares that such-and-such a field, or farm, or cow-shed has now, or has had within ten days, cattle plague existing on it. He must then serve notice of the declaration on the occupier of the cow-shed, field, or other place; and immediately the notice is served, the occupier must take great care what he does; for each cow-shed, field, or other place mentioned in the notice immediately becomes what is called "an infected place." And not only does the place mentioned in the notice become infected, but also "**all lands and buildings** contiguous thereto in the same occupation." This means that if a farmer has five fields, with one in the midst of the other four, and the middle field is notified as having had cattle plague existing in it within ten days, not only does that field become an "infected place" but the other four fields also; and not only the other four fields, but any farm-buildings adjoining the infected field.

It appears that **cattle plague** is a disease of the most infectious character. The wind may carry it. Therefore it is enacted that the inspector has to serve a notice of infection on the occupiers of, all lands and buildings of which any part lies within a mile of the infected field or building named in the original declaration. Let us suppose that Inspector Brown has notified to him by Farmer Giles that a cow of Farmer Giles's, at present grazing in Five-acre Field, looks as though it had cattle plague. The inspector makes his inspection. He comes to the conclusion that the cow has the disease in question. Thereupon he writes out a declaration in which he says that he declares Five-acre Field to be a place where cattle plague exists. Now you have to measure a mile from Five-acre Field on every side. And suppose your measurements bring you on the land or to the buildings of another farmer, that unfortunate man also must be served with a notice; and when he has been served with a notice, all his lands and buildings are to be taken as part of the infected area.

Something is left to the inspector's discretion. If, under the circumstances of any case, he thinks it would not be expedient to serve the notice on any neighbour, he need not do so; but the matter lies within his power.

Having notified everybody whom he intends to notify, the **inspector must inform the Board of Agriculture** and the local authority of his doings. He must send to the Board a copy of his declaration, and of any notice served by him. The Department is bound by law, immediately on receipt of the information, to inquire into the correctness of the inspector's declaration. If they are satisfied of the correctness thereof, they are bound to determine and declare accordingly—that is, to put the seal of their authority upon the local inspector's declaration; and it is for the Board to

prescribe the limits of the "place infected with cattle plague." If they are not satisfied that the inspector's declaration as to the existence of cattle plague is correct, they must determine and declare accordingly; and thereupon the places comprised in the inspector's declaration and notice cease to be an infected place.

A person on whom the notice of infection is served, **if he does not wish to have his farm dealt with** under the Acts, ought immediately to put himself into communication with the Board of Agriculture. He should write to them as soon as he gets the notice, laying before the Board all the facts he considers they ought to know. His letter should be addressed to the "Under-Secretary, Board of Agriculture, S.W."

The Board may, on evidence satisfactory to them, declare any cowshed, field, or other place (with or without any lands or buildings adjoining or near thereto) to be a place infected with cattle plague. They have power also to extend, contract, or otherwise alter the limits of a place that has been declared to be infected. And they may also at any time declare that an infected place or any part thereof has ceased to be infected. The evidence upon which they may act is not evidence as a lawyer would use the word. It simply means that if the Board of Agriculture are informed, by someone whom they choose to believe, of facts which would make it advisable (for instance) to declare that the farm near an infected farm, though not within a mile of it, should be made subject to the stringent provisions of the Diseases of Animals Act, they may declare that place to be infected. Besides the mere declaration that such-and-such a specified place is a place infected, the Board of Agriculture have another power, much wider and much stronger. Indeed, if cattle plague has not been stamped out in the country it would seem not to be because the Board of Agriculture have not sufficient authority. The Board of Agriculture **may declare the whole of the area** in which is situated the place infected with cattle plague to be "an area infected with cattle plague." They may also extend, contract, or alter the limits of that area, or declare the area free of cattle plague, or declare part of the area to be free from cattle plague. The difference between an infected place and an infected area is this kind of thing: Farmer Giles has a cow suffering from plague. When the fact is discovered the cow is in the shed. Farmer Giles's farm is called the Manor House Farm. The inspector, on being notified by Farmer Giles, steps in and signs a declaration that the shed is infected. He serves notices on all the farmers and graziers within a mile of that shed. Then the Board of Agriculture declare the shed, and the whole of Manor House Farm, and the whole Home Farm, which runs very close up to the shed, to be "infected places." But this is not a declaration of an infected area. The Board may issue their declarations of infected area by issuing an order, signed by the secretary, by which it is ordered and declared that the whole of the lands and buildings within the District Council area of Mudford is an infected area. I am assuming that Farmer Giles's cattle-shed is in the district governed by the District Council of Mudford.

All animals infected with the cattle plague are to be slaughtered. And not only that, but all animals which are in the same shed, stable, herd, or flock with an animal infected with the cattle plague are to be slaughtered, and all animals that have been in the same shed, stable, herd, or flock. Further, all animals which are, or have been, in contact with an animal infected with cattle plague must be destroyed.

As it is not always easy, seeing that you cannot ask a cow her symptoms, to know whether an animal is infected with cattle plague, or has been in a place so infected, power is given to the Board of Agriculture to slaughter **suspected animals.** The animals that may be slaughtered under the head of "suspects" are those which are suspected of having the cattle plague, or are in a place infected with cattle plague—by which I mean a place (not an area) which has been declared by a Board of Trade order to be an infected place.

As for animals within an infected area, but not within an infected place within that area, the Board has not such unlimited discretion. The Treasury have something to say in this matter. The Treasury are the guardians of the public purse; and in the interests of economy they are allowed to make regulations restricting the slaughter of cattle that are within an infected area. Subject to such regulations as the Treasury think fit to make, the Board of Agriculture may order the slaughter of all animals within the infected area.

The Act recognises the principle that as the animals are slaughtered in the public interest, the public ought to pay. The ox with rinderpest may get well if he is properly treated, or even if he is left to himself. But in the interests of public health he is not allowed the chance of getting well; he is slaughtered right away. Upon this principle (and also, I suppose, to encourage the owners of cattle to give prompt notice of cattle plague) **compensation is payable for all cattle slaughtered.** Where the animal actually had the cattle plague, the compensation payable is **half its value**, calculated at the time immediately before the animal had the plague. In the case of an animal slaughtered merely as a suspect, the **full value** of the animal, calculated at the time immediately before it was slaughtered, is the compensation payable.

But there is a limit even to the generosity of the House of Commons towards the agricultural interest. I rather suspect, if it were not for the clause I am about to mention, it would turn out whenever a cow or a horse was slain under the cattle plague sections of the statute, that the same cow or horse was a beast of most distinguished pedigree and wonderful qualities. Of course, it may happen that a race-horse worth thousands of pounds, or a prize bull worth a thousand guineas, might become infected with cattle plague. But no animal slaughtered under the Act is ever to be valued for beyond the sum of £40. To put it another way, however valuable the animal slaughtered may be, the owner thereof cannot get more than £40 for it if it were a sound animal or more than £20 if it were an animal actually infected.

The compensation payable to the owners of animals slaughtered on account of cattle plague is payable by the Board of Agriculture out of money provided by Parliament.

We now come to the consideration of infected places, areas, and circles, for **diseases generally**—that is, not restricted to the case of cattle plague.

The provisions as to cattle plague may be carried out by any inspector. There are two kinds of inspectors, namely, those appointed by the Board of Agriculture and those appointed by the local authority. What I am about to tell you now affects the local inspector. A local inspector, on being satisfied that **pleuro-pneumonia** exists in a shed, field, or other place, or has existed within a period of fifty-six days, must sign a declaration to that effect, just as in the cattle plague case. The same provision applies to the existence of **foot-and-mouth disease**, except that the inspector must be satisfied either that the disease now exists, or has existed, in the shed, etc., within a period of ten days. Notice of the declaration is to be served on the occupier of the infected place; and, in the case of foot-and-mouth disease, also on the occupier of any land or buildings contiguous thereto. But the inspector need not serve the notice on adjacent occupiers if he thinks it unnecessary.

Immediately the notice is served, whether upon the occupier of the shed, etc., or upon an adjacent occupier, the land and premises of the person on whom the notice is served **becomes an infected place**. But this is always subject to the decision of the local authority on the matter. For the inspector must at once inform the local authority; and the local authorities must make inquiries into the correctness of their inspector's declaration. If satisfied that the inspector is correct, they may order and determine accordingly. And their order must prescribe the limits of the place infected. They may include within those limits lands or buildings adjoining to or near the place where the outbreak occurred. And if, as may easily happen, part of a farm is in a district under a different Council—that is, for instance, where a farm is partly in Westmoreland and partly in Lancashire—the local authority whose inspector has reported may include in the infected area some part of the jurisdiction of the neighbouring local authority. But they must first obtain the consent of the neighbouring local authority.

Suppose the local authorities come to the conclusion that the inspector was wrong, they determine and declare accordingly; and thereupon the embargo that was laid on the places specified in the inspector's notices ceases to have any effect. To put it another way: if an inspector comes to your borough and says one of your cows has foot-and-mouth disease, and he makes a declaration in writing to that effect, and serves you with notice of it, you must consider your place an infected place until the Town Council have considered the matter. If the local authorities, on consideration and inquiry, think the inspector right, your place continues to be an infected place. But if they think he was wrong, then it ceases to be an infected place.

But the local authorities are not the sole and undisputed administrators of the law in this respect. The local inspector, in addition to reporting to his employers, must report to the Board of Agriculture. Not only that, but the local authorities must report to the Board of Agriculture what pro-

ceedings they have taken. They must also communicate to the Board whether or not, in their opinion, it is expedient that the Board of Agriculture should proclaim an infected area comprising the infected place. They must also tell the Board of Agriculture what, in their opinion, are to be the limits of that area. Further, they must state whether there is within the proposed area any place used for the holding of a market, fair, exhibition, or sale of animals; and if so, whether it is expedient that the market, fair, etc., should be prohibited or restricted.

If your farm has been "declared," you should notify the local authorities immediately the disease has been stamped out. Being satisfied of the fact, they may, after a lapse of fifty-six days (pleuro-pneumonia), or fourteen days (foot-and-mouth), declare the place free.

The local authorities are not, as I have said, the sole administrators of the law; for the Board of Agriculture may, on any evidence which it considers sufficient, declare a place to be infected with pleuro-pneumonia or foot-and-mouth disease. And the Board may extend or contract the limits of the place declared to be infected; and may declare the place to be free from infection. This section is no doubt inserted to enable the Board of Agriculture to do these things when some lethargic or pig-headed local authority declines to do them.

The Board of Agriculture may also declare "an area" (as distinguished from a mere place) to be **an area infected** with pleuro-pneumonia or foot-and-mouth disease; and may extend the limits of the area; and may declare the area or part thereof free from infection. This order may prohibit the holding of any market, fair, exhibition, or sale of animals, or of any particular kind of animals; or the Board may, if thought advisable, allow such a market, fair, etc., to be held subject to certain terms and conditions.

I have now dealt with the worst three of the cattle diseases. The others may be dealt with more *en bloc*. The Board of Agriculture has power to make orders for dealing with such cases in infected places; and infected areas are to be declared in the case of diseases of animals other than the three above mentioned. They make declarations, subject to their rules; and these declarations are valid to constitute the places or areas infected.

MOVEMENT INTO AND OUT OF INFECTED PLACES AND AREAS.

The whole object of proclaiming a place or an area infected with a particular disease of animals is to isolate the area or the place. Therefore it is quite obvious that when a place or an area has been declared to be infected with one of these diseases, it is impossible to allow the free movement of animals either in the district, or into the district, or out of the district. When you read the regulations I am about to cite as to the movement of cattle, I want you always to bear in mind the distinction pointed out previously as to infected "place" and infected "area."

Where there has been **an outbreak of pleuro-pneumonia**, cattle are not allowed to be moved out of an infected place except in such cases as the

Board of Agriculture think fit to except. In other words, if a farm is declared an infected *place* (infected with pleuro-pneumonia), no cattle may be moved out of the farm except with permission of the Board of Agriculture. Neither may cattle be moved into a place declared infected with pleuro-pneumonia, unless the cattle moved in are themselves infected with pleuro-pneumonia. Unless, that is to say, the Board of Agriculture chooses to give permission.

Where by an order of the Board of Agriculture allowing cattle to be moved into or out of an infected place, conditions are laid down, the cattle can only be moved in strict compliance with these conditions.

Where you have a whole *area* proclaimed as an infected area (infected with pleuro-pneumonia), no cattle may be moved into, within, or out of the area without the licence of the local authority. And any licence is subject to such restrictions and conditions as the Board of Agriculture may prescribe. I want you to understand that the local authority cannot allow or licence any movements of cattle out of the infected *place* within the area. Their licence is only good so far as it allows the movement of cattle into or out of the proclaimed area, exclusive of the proclaimed place. So that if Giles's farm, where the pleuro-pneumonia broke out, is proclaimed as an infected place, and the whole area for a radius of ten miles round is proclaimed an infected area, the local authority may give a licence to Giles's neighbours to move their cattle in and out of the area except in and out of Giles's farm.

When you come to places proclaimed or areas **proclaimed as infected with foot-and-mouth disease**, you have regulations of a somewhat similar character as to the movement of animals. I want you to note the word "animals." The pleuro-pneumonia regulations do not refer to "animals," but to "cattle." So that where you have a place or an area declared infected with foot-and-mouth disease, you are not allowed to move animals of any kind within it, or into it, or out of it, except on the same terms as are applied to cattle only in the case of pleuro-pneumonia.

The Board of Agriculture have power to declare that on a declaration to that effect being made and signed by an inspector of the local authority, **a circle of infection** shall be created. That is to say, they may order that upon the declaration that such-and-such a disease of animals exists at any place, the whole space lying within a distance of half a mile from any part of the infected place shall become and be a circle infected with disease. But the Board of Agriculture may, if they like, limit the application of such an order to infected places in any particular district or districts. When the infected place which forms the centre of the circle ceases to be an infected place, the circle ceases to be an infected circle.

If you have charge of any animals, or own any animals, in a place or area declared infected with any disease, you must put up a notice near the entrance forbidding any person to enter without your permission. Any person who does enter, unless he is somebody who has a legal right to come in, thereupon commits a breach of the Diseases of Animals Act.

It is left in the hands of the Board of Agriculture to **kill out of hand diseased animals**. We have seen what are the powers they have to deal with cattle infected with the cattle plague; they have much the same powers with regard to cattle affected with pleuro-pneumonia. The Act enjoins them to slaughter all cattle actually affected with the disease. It is also lawful for them to cause to be slaughtered cattle suspected of being affected, cattle that have been in the same field, shed, or place with infected cattle, and cattle which appear to the Board to have been in any way exposed to the infection.

Compensation is to be made for cattle slain in the combat against pleuro-pneumonia. The maximum value of any beast is to be taken at £40. If the animal was killed because it was suspected merely, the owner is entitled to its full value up to £40. The value is counted immediately before the slaughter. If the animal was slain because it had pleuro-pneumonia, the owner is entitled to three-fourths of its value up to £40—that is to say, he may get as much as £30. The value is to be taken as at the moment when the animal contracted the disease.

If the Board of Agriculture have decided to have any animals slaughtered for pleuro-pneumonia, the owner of the cattle may give notice saying that he desires the Board to do the slaughtering.

The Board have similar power to slaughter all animals affected with foot-and-mouth disease, or suspected of being affected. You see, this is rather different from the cattle plague and pleuro-pneumonia cases. In those cases the Department is bound to cause all animals having those diseases to be slaughtered, and they have a discretion as to ordering suspected animals; but in the case of foot-and-mouth disease the Board have a discretion in every case. They may, if they think fit, also cause to be slaughtered animals that have been exposed to infection, or have occupied the same shed, field, etc., or have formed part of the same herd or flock, as the diseased animals. The compensation is different in the case of foot-and-mouth disease also. The full value of the slaughtered animal is to be paid to its owner. The value is to be taken as immediately before the animal became diseased; or, if the animal is slain as suspect merely, then its value immediately before it was slaughtered. The Act places no limit on the amount payable.

Swine affected with swine fever, or suspected of being affected, or which have been in contact with swine that have swine fever, or have been exposed to infection, may be ordered to be slaughtered by the Board of Agriculture. As in the case of foot-and-mouth disease, the Board has a discretion. The compensation to be paid for slaughtered animals is one-half of the value in the case of an animal actually diseased, and full value in the case of one only suspected. If the animal was diseased, its value is to be taken as at the moment before it became diseased. If it is only a suspected pig, the value is to be taken as immediately before it was slaughtered. There is no limit as to value.

Where the animal has been slaughtered under the Diseases of Animals Act by order of the Board or of a local authority, it is to be **sold or other-**

wise disposed of, or buried, as the Board or the local authority may order. If it is sold, and the amount received for the carcase comes to more than the compensation paid to the owner, the local authority or Board must pay that excess to the owner.

There is another thing to be noticed about this compensation. If the owner of the slaughtered animal had insured it, as many prudent farmers do **insure valuable animals**, the insurance company may deduct from the Insurance money the amount paid by the Board of Agriculture or the local authority as compensation.

Farmers and others who are liable to come within the purview of this statute should remember that they **may lose their cattle, and their compensation** also, if they are caught trying to break the law. The Board or local authority, or whoever it is who has to pay the compensation for compulsory slaughter, has the right to deduct something from the compensation, or to stop the compensation altogether, if the owner of the animal, or the person being charged thereof, has been guilty of an offence against this Act. That is to say, for instance, if he has failed to notify a police-constable immediately he discovered symptoms of disease.

No swine may be moved into or out of an infected place, except with a licence from the inspector or the Board of Agriculture. Neither may any carcase be removed from an infected place without the written permission of an inspector of the department or an inspector of the local authority. A like prohibition applies to the removal of litter, dung, utensils, hurdles, and other things.

In order to prevent this disease from spreading, the Swine Fever Order of 1894 lays it down that nobody except the person tending the pig shall be allowed to enter a sty or place which is part of an infected place, in which a pig with swine fever is or has recently been kept. The same applies to a sty or place where a suspected pig is or has recently been kept. If anyone wishes to enter the sty, except a person tending the pig, he must *obtain written authorisation* from an inspector or officer of the department, or an inspector of the local authority.

Everyone, including **the person tending the pig**, is bound to perform certain ablutions. When he leaves the sty or place in question, he must thoroughly wash his hands with soap and water. And he must wash his boots also with a solution of carbolic acid or some other disinfectant. Even then, a person tending a diseased or suspected pig is not allowed to tend any pig not diseased or suspected. This does not apply to anyone except a person habitually tending the pig. It would not apply, for instance, to a veterinary surgeon who had obtained permission from the local authority or the Board of Agriculture's inspector to visit a feverish pig.

SLAUGHTERING, DISEASES, AND COMPENSATION GENERALLY.

Except in cases of cattle plague, the Board of Agriculture have power to make orders relating to various matters in the case of the existence, or sus-

pected existence, of any disease other than cattle plague. The orders in question may be either general or merely applicable to particular instances. They may prescribe that animals shall be slaughtered by local authorities, and that compensation for the same may be paid by local authorities out of the local rates; that animals suspected of disease as well as those actually affected may be slaughtered, and also animals having been in the same field, shed, or place, or in the same herd, or flock, or otherwise in contact with animals affected.

It is also lawful for the Board of Agriculture, instead of causing the animal to be slaughtered, to reserve it for observation and treatment. But if an animal is so reserved, the Board or the local authority, as the case may be, must pay compensation as in the case of cattle slaughtered. Where an animal has been slaughtered, its carcase belongs to the Board of Agriculture or to the local authority, whichever of them ordered it to be killed. **Animals may be buried** in any ground which is in possession or occupation of the owners of those animals. The Board of Agriculture may order such slaughtered animals to be buried in common or unenclosed land—such as the village green. The local authority may also order animals to be buried in common or unenclosed land, if they procure the approval of the Board of Agriculture of such a burial.

It is lawful for the Board of Agriculture to make orders such as they may think necessary or expedient relating to animals found to be affected with pleuro-pneumonia or foot-and-mouth disease, under the following circumstances :—

- i. While exposed for sale or exhibited in a market, fair, sale-yard, place of exhibition, or other like place.
- ii. While placed in a lair or other similar place before exposed for sale.
- iii. While in transit or in course of being moved by land or by water. This includes the case of animals which are being sent by a seller to a buyer, and also animals which are being sent from one place belonging to the owner to another place belonging to him.
- iv. While in a foreign animals wharf, or foreign animals quarantine station.
- v. While in a slaughter-house, or in a place where animals are slaughtered, or are kept with a view to slaughter.
- vi. While on common or unenclosed land.
- vii. While being in a place not in the possession or occupation, or under the control, of the owner of the animals.

It is the duty of the Board of Agriculture to make orders to provide for the case of animals who are found in any of the places numbered i. to vi., inclusive, or under the circumstances which come under the head of vii. They must also make provision for the case of animals which are, or have been, in sheds, or in any way mixed with, or brought into contact with, animals found in those places or under those circumstances.

The present orders of the Board of Agriculture with respect to anima's

found to be infected with pleuro-pneumonia under the above circumstances, or in the above places, are as follow :—

(a) The inspector of the local authority has to cause to be seized all the cattle that are affected with the disease of pleuro-pneumonia. He is also to seize all cattle that are in the market, fair, sale-yard, place of exhibition, lair, landing-place, wharf, railway station, common, unenclosed land, or farm, field, yard, shed, park, or other place wherein animals of different owners are taken in for shelter, or for rest, or for grazing, or for any other purpose. Having seized the cattle, the inspector has to telegraph information of his seizure to the Secretary of the Board of Agriculture. Until he receives orders as to how he is to dispose of the cattle he has seized, the inspector is to detain them either at the place where they were seized or else at some convenient place. As far as is possible, he is to keep the cattle actually affected with pleuro-pneumonia separate from the cattle not affected. It is unlawful for anybody to remove cattle seized under these circumstances, except with the permission of the Board of Agriculture. The same kind of rule applies in the case of animals found by the local inspector to be affected with foot-and-mouth disease at any of the places, or under the circumstances mentioned in numbers i. to vii. inclusive—that is to say, the animals may be seized, detained, and kept isolated.

(b) When any cattle affected with pleuro-pneumonia, or animals that have foot-and-mouth disease, are found at any of the places mentioned in numbers i. to vii., the place where they are found is not to be considered an infected place within the meaning of the Diseases of Animals Act unless the Board of Agriculture shall so determine. The Board of Agriculture may declare the market, fair, etc., to be an infected place if they think fit and proper.

(c) When any market, fair, etc., is found to contain any animal affected with **foot-and-mouth disease**, it is unlawful to use such a place without disinfecting the part where the animal was found. Moreover, a veterinary inspector, whose name and address will be supplied to you by the local authority, must certify that the portion of the market or other place where the animal was found has been cleansed and disinfected. Until he gives a certificate, that portion of the market or other place cannot be used for animals. I would have you notice that this does not apply to cases of pleuro-pneumonia.

When a local authority, by the hand of the local inspector, has incurred expenses in the seizure and detention of animals found to be infected with either of the two diseases just mentioned, in a market, etc., the local authority may recover those expenses from the owner of the diseased animal.

It is lawful for the Board of Agriculture to make orders, as they shall think proper, to prescribe and regulate the movements of animals and persons into and out of the infected area or infected place. They may also prescribe or regulate the exposure of diseased or suspected animals in a market, fair, sale-yard, or other public or private place where animals are commonly exposed for sale, or for any places where animals are commonly placed before being exposed for sale in such market, fair, or other place

The regulations under the last head at present in existence are that you shall not expose a diseased or suspected animal in a market, fair, sale-yard, or place where cattle are usually exposed for sale; nor place it in a lair or other place connected with a market or fair, or near to it, or where cattle are commonly placed before exposure for sale; nor carry, nor send, a diseased or suspected head of cattle on a railway, canal, river, or inland navigation, or in a coasting vessel; nor drive it on a public highway or thoroughfare. That no cattle that have pleuro-pneumonia, or are suspected to have it, are to be kept in a field or on land adjoining the highway, unless the field is fenced in such a way that the cattle cannot come in contact with cattle passing along the highway; nor to be fed at the side of a highway, nor to stray there. All these provisions apply to animals which are diseased, or suspected of being diseased, with foot-and-mouth disease. They also apply to sheep that have the sheep-pox, or are suspected of having it; also to sheep having, or being suspected to have, sheep-scab; also to swine suspected of having swine fever, or animals having it; also to horses, asses, or mules suspected of having glanders or farcy; also to animals having, or suspected of having, anthrax.

There are certain regulations which deal with the transit, both by land and sea, of animals that are affected with these various diseases.

The Board of Agriculture has power to make orders for prohibiting or regulating the removal of carcasses, fodder, litter, utensils, pens, hurdles, dung, or other things into or out of, or within, an infected place or area. Under their power of making such orders, they have made the following orders:—

Cattle Plague.—No horse, ass, mule, dog, or other animal; no carcass, fodder, litter, dung, utensil, pen, hurdle, or other thing shall be moved out of a building or enclosed place in which cattle plague exists, or is suspected to exist, or has within ten days existed or been suspected to exist.

Pleuro-pneumonia.—No dung, fodder, or litter that has been in an infected place, or in any place in contact with or used about diseased or suspected cattle, may be moved or sent to be carried without the licence of an inspector. No cattle may be removed out of an infected place except with a licence from an inspector or officer of the Board of Agriculture.

It is quite lawful for an inspector of the local authority, or an inspector, or other officer of the Board of Agriculture, to give a notice to the owner of some animal suspected of having been in contact with a diseased animal, not to move either one particular animal or several particular animals out of some place to be named in the notice. That is, he may give a farmer notice not to move a particular half-dozen cows out of a particular field.

Foot-and-mouth Disease.—It is unlawful for anyone to send or carry, or cause to be sent or carried, whether on a railway, or canal, or other inland navigation, or on a coasting-vessel, or on a highway or thoroughfare, any dung, litter, or fodder used about an animal infected with foot-and-mouth disease; or even if the animal is only suspected. If you wish to

remove the fodder, etc., you must obtain a licence from a local or a Government inspector. There appears to be no prohibition against moving an animal suspected of foot-and-mouth disease unless the inspector of the local authority or the Board of Agriculture have given a notice in writing prohibiting the animal from being removed. This notice may, for instance, forbid a pig to be removed out of a particular sty, or a cow to be removed out of a particular shed. And once it has been given, the animal in question may not be removed at all until the second notice is given by one of these inspectors authorising its removal. The notice may not only forbid removal of the animal, but also forbid the owner or person in charge allowing it to come in contact with any other animal.

Sheep-pox, Sheep-scab, and Swine Fever.—Where the place has been declared to be infected with the sheep-pox, no sheep is allowed to be moved out of it. A carcase may only be moved out of the infected place with a certificate of a veterinary inspector of the local authority certifying that the carcase is not affected with sheep-pox. The carcase must be skinned before it is removed. The local authority's inspector may give a licence to carry a carcase away to be buried or burnt. The licence only lasts for twelve hours; and if it is a licence to take a carcase away for burial or destruction, the certificate must name the place to which it is to be taken. The skin, fleece, or wool of the sheep may not be removed from the infected place unless the veterinary inspector has certified that it has been disinfected and cleansed to his satisfaction.

As to *sheep-scab*, the rules are not so strict. The owner of any place in which a sheep that has sheep-scab, or is suspected of having it, is bound to disinfect the utensils, pens, hurdles, and other things used about the sheep. He is bound to sweep the place out and destroy all the litter, dung, and other things that have been in contact with the sheep. He must scour and disinfect the floor. He must wash over the other parts (if it be a building or enclosure) with lime-wash, or some other disinfectant approved by the local authority. In case of a yard or field it is sufficient if he cleans and disinfects the place to the satisfaction of the local inspector. Where it is practicable, fresh burnt lime must be used, lime-wash made, and the utensil, etc., given a thorough coating of lime-wash.

Swine fever.—This is a most insidious disease, and, as they used to say when I was a boy, "very catching." It is therefore prohibited to remove any dung, fodder, or litter that has been in an infected place. By this I mean a place which has been notified in the manner described in the earlier part of this chapter. It is also prohibited to remove, or send for carriage by land or water, any dung, fodder, or litter that has been in a place in contact with, or used about, a pig affected with, or suspected of, swine fever. The latter prohibition is different from the former, as you see the former prohibition only affects cases where an inspector, or the Board of Agriculture, or the local authority, may have declared or notified the place to be infected. The latter prohibition affects cases where pigs actually have swine fever, whether there has been a notification or not; or where the owner suspects them to have

swine fever, whether there has been a notification or not. To give an instance: You have a pig in one of your sties. The said pig suddenly breaks out with the symptoms of swine fever. You notify the local inspector; but before the inspector can write out and sign a declaration that the place is infected, twenty-four hours elapse. During that twenty-four hours you must not remove any dung, litter, or fodder, or send it away, either by land or water, from the sty in which that pig has been.

An inspector of the local authority or Board of Agriculture may, where he suspects swine fever, give a notice to the owner or person in charge of any swine, requiring that such **swine shall be detained** in a particular place. He may require it to be detained within the limits of a sty, shed, field, or farm. After the notice is served, the person in charge of the pig is not allowed to remove it out of the limits specified in the notice until he has received from the inspector another notice telling him that he may remove it. Moreover, if the notice requires him so to do, he must not take measures to move out of the place mentioned any other swine. Nor may he, until the prohibition is removed by the second notice, bring any other swine into the place mentioned, or suffer any swine to come in contact with the swine to which the notice applies.

Where there has been an outbreak of swine fever, or where it is suspected that swine fever has existed, an inspector or officer of the Board of Agriculture may require the sty, or place that has been used for the swine, to be disinfected and cleansed to his satisfaction. And he may also require or cause to be cleansed and disinfected any utensil, pen, hurdle, or other thing used for or about such swine, and also any woodwork with which the swine may have come in contact.

And as prevention is better than cure, it is in the power of the official to see that vans, carts, and other vehicles used for the carriage of swine, and ropes, nets, and other apparatus used in connection with the carriage, are cleansed and disinfected. In pursuance of the same object, he may compel the owner of the swine to burn or otherwise destroy the fodder, or litter, or dung that has been found in the sty of the suspected or diseased animal, or that may have come in contact with it. And it is the duty of the owners of such swine, and the occupiers or tenants renting the sties, or other places affected, to give to the inspector of the Board all the facilities he requires for the purpose of cleansing and disinfecting.

When a carcase of an animal affected with the disease has been buried by order of the local authority or of the Board of Agriculture, it is an offence to dig it up. You must always, when you bury the carcase of a diseased animal, bury it deep enough. Six feet is the usual depth prescribed. You must also put some quicklime on the top of the carcase by way of disinfectant.

How are animals which have been slaughtered under the Diseases of Animals Act valued?

In England and Wales, in the case of an animal slaughtered by order of the Board of Agriculture for cattle plague or pleuro-pneumonia, or foot-and-

mouth disease, or sheep-pox, the procedure is that the inspector or officer of the Board gives a notice to the owner of the animal in writing stating the valuation put upon the animal by the Board of Agriculture. If the owner of the cattle or animal disputes the valuation, as found by the Board of Agriculture's inspector, he must, within fourteen days, give a written counter-notice in writing, stating in effect that he disputes the Board of Agriculture's valuation. If he does not give a counter-notice, he is to be concluded to have agreed to the value as placed upon his animal by the Department.

The following letter would be a sufficient counter-notice :—

“To the Secretary of the Board of Agriculture,
“4, Whitehall Place, London, S.W.

“November 15th, 1902.

“TAKE NOTICE that I dispute the valuation made by your Board of
“the head of cattle slaughtered by your order on account of pleuro-
“pneumonia on the 15th day of October, 1902, which valuation has been
“notified to me by a notice dated November 3rd, signed by your
“inspector.

“ (Signed) JOHN GILES.”

This notice may be given either by the owner of the cattle slaughtered, or by his agent. If the owner of the cattle or his agent gives such a counter-notice, disputing the Board of Agriculture's valuation, then the value of the cattle is to be **decided by arbitration**. The arbitration is conducted by a single arbitrator. This arbitrator may be either appointed by agreement between the owner of the animal (or his agent) and an inspector or officer of the Board of Agriculture in writing, or may be appointed by some Magistrates' Court. The Board of Agriculture's inspector or the owner (or agent) may apply to the Magistrates' Court for the appointing of an arbitrator as soon as seven days have expired from the time of the counter-notice. Seven days are allowed for the parties to come to an agreement.

The arbitrator will hear such evidence as he thinks proper as to the value of the slaughtered animals. As I have told you before, in some cases the Diseases of Animals Act only allows a certain maximum. Having heard the evidence, the arbitrator makes an award in writing. Either the Board or the owner of the animals may take up the award, which must be ready within seven days after the arbitrator is appointed. As to the costs of the arbitration, they are fixed by rule. If the arbitrator awards a higher value than that specified in the notice given by the Department, then the Board of Agriculture has to pay all the costs of the reference and the award, and all the costs incurred by the owner of the cattle in respect of the arbitration. If, however, the arbitrator awards to the cattle-owner no more than he was originally offered by the Board, then the costs and expenses are to be deducted by the Board from the compensation awarded. You see that the costs are not a personal debt due from the owner of the slaughtered animal to the Board of Agriculture. They are only liable to be deducted from the amount of compensation. If the costs should amount to more than the compensation

awarded, it simply means that the Board of Agriculture pay no compensation. The costs and expenses of the award and the arbitration—including the arbitrator's fee—may either be settled in a lump sum by the arbitrator, or he may "tax" them. By "tax" I mean that a bill is sent in by the party in whose favour the award has gone, and the arbitrator goes through the bill and knocks out anything he thinks excessive.

IN SCOTLAND the procedure for ascertaining the value of slaughtered animals is somewhat similar. The inspector sends to the cattle-owner (or his agent) a notice in writing of the Board's valuation. If the owner of the animal objects that the value is not enough, he is to object in writing within fourteen days, much after the fashion of the notice set out above. If he does not object within fourteen days, the inspector's valuation is to be taken as correct. If he does object, the question of value is to be determined by a valuer. The valuer may be agreed upon in writing by the inspector or officer of the Board and the owner of the animal (or his agent). If they cannot manage to agree within seven days after the owner's counter-notice is served, either the Board or the owner may apply to the sheriff-substitute to appoint a valuer. Notice must be given to the other side that such an application is to be made at a certain time and at a certain place.

The valuer having been appointed, he makes his valuation on such evidence as he chooses to ask for and receive. He must have the valuation ready for delivery within seven days after he is appointed, whether he be appointed by agreement or by the sheriff-substitute. The valuation, when given, is final and binding on everybody. As to **the costs and expenses of the valuation**, the rule is that the loser pays. If the valuer awards to the owner more than he was originally offered by the inspector of the Board of Agriculture, the owner is allowed his costs and expenses; but if the sum arrived at by the valuer is the same as that specified in the original notice of the Department, or is less than that sum, the Board may deduct their costs out of the compensation payable. The valuer may tax or settle the costs as in the English case.

FOREIGN ANIMALS.

In order to **prevent the importation of cattle diseases** along with the cattle, power has been given to the Board of Agriculture to make regulations for slaughtering all foreign animals at the port of landing. Power has also been given to compel the importers of animals to put their stock in quarantine. And a still wider power has been given by which the Board of Agriculture may, so to speak, proclaim any foreign country to be an infected area. By order published in the *Gazette*, the Board of Agriculture may declare that no animals, or no animals of specified kinds (for instance, sheep, or swine, or dogs), that no animals or carcasses, or fodder, or litter, or dung (or other things like those specified), shall be brought into the United Kingdom from some particular country. By "country" is meant any place having a Government of its own outside the United Kingdom. Thus it includes the Colonies.

There are, however, certain exceptions to these rules. *Foreign animals intended for exhibition* or other exceptional purposes may be exempted from these rules. That is to say, they may be landed elsewhere than at a foreign animals wharf, and may be moved alive out of the wharf if they should be landed there. But I would warn you, that before you land an animal from abroad, if you are bringing that animal into this country for exhibition, or to keep as a pet, or anything of that kind, you should write a letter to the Secretary of the Board of Agriculture, at 4, Whitehall Place, S.W., asking his permission to bring the animal into the country. He may grant you permission subject to the regulations as to quarantine.

POWERS OF OFFICIALS.

I suppose my friends the farmers will want to know something about the rights and powers of the officials who act in enforcing the Diseases of Animals Acts. First of all, Who are the people who have the right to act? and then, What are the limits of their authority? Nothing is more irritating to the free-born Briton than to be snapped up by a jack-in-office. And I must admit that the manners and customs of officials, especially in country districts, is sometimes calculated to annoy those over whom they exert their little brief authority.

The people who actively enforce the law in this respect are (1) the police and (2) inspectors of the Board of Agriculture. And it must be confessed that both **police and inspectors have very wide powers**—the inspector has the wider power of the two. Let us see what these officers are entitled to do.

Either a policeman or an inspector may stop and detain a person seen or found committing an offence against the Diseases of Animals Act. The policeman or inspector may even detain you if he reasonably suspects you of being engaged in committing such an offence. As a rule, it is unlawful even for a constable to arrest any person on suspicion of any offence except a felony. He must get a warrant in other cases. But under the Diseases of Animals Act he may stop you without a warrant.

A policeman finding a farm-servant driving cattle out of an "infected circle" is not bound to detain him or apprehend him. He may do this or not, just as he pleases. In any case, he can turn the cattle back into the district they came from. He may arrest the man in charge and lock him up, and then send somebody else back with the cattle; or he may make the drover take the cattle home again. The constable has a right and a duty to see that such cattle are actually taken home again. The same thing applies to a single animal, or a vehicle, or anything which is being moved from one place to another in breach, or suspected breach, of the Diseases of Animals Act. Thus, if a policeman sees a cart containing a pig-trough coming down a lane, he may stop it. Probably he will know the driver of the horse and cart. He proceeds to question the driver, asking him where he has come from, and whither he is going, whose trough that is, where it has been in use, and so on. Suppose the driver says that the trough has come from the Manor Farm,

Mudby-by-Slush. The constable knows this farm to be an infected place, proclaimed as such by a recent order of the Board of Agriculture. He promptly turns the cart round, and sees to it that the same is taken back to the Manor Farm. He may or may not arrest the driver, just as he thinks fit and proper. If the driver is what a sailor would call "obstreperous"—that is, if he obstructs or impedes the officer in the execution of his duty under the statute—the officer may promptly arrest him for that offence. Suppose, for example, the farm-servant in question has in his cart, not a pig-trough that has come in contact with a pig infected with swine fever, but half a dozen chairs. The constable, not being able to see into the cart, orders the driver to stop. The driver refuses. Thereupon the officer says, "I suspect you of removing something in that cart contrary to the Diseases of Animals Act." The rustic holding the reins has not the wit to say what the cart really contains. He contents himself with bestowing a hearty curse on the officer and telling him to stand aside. The officer, however, stands in front of the horse. The rustic gives the animal a cut with his whip, causing it to spring forward. The officer has to jump out of the way to save his bones. The rustic will most probably find himself in for a substantial fine. Moreover, if the officer can catch him up, he may forthwith arrest him and clap him into the nearest gaol. And all this, you observe, although the poor man was not actually committing any crime at all. Whether the police-constable has any right to order him to stop and allow his cart to be searched, depends on whether the constable has a reasonable suspicion or not that an offence is being committed.

I need hardly say that when anybody is apprehended either for an offence or on suspicion of one, or for obstructing an officer, he must be taken with all practicable speed **before a magistrate**. He is not to be detained without a warrant longer than is absolutely necessary. The magistrate may let him out on bail, and most likely will do so, until such time as the charge against him shall be heard. I ought to add that a constable or inspector may call any of his Majesty's lieges to his assistance, and that such lieges must assist, unless they have some reasonable excuse. I, for instance, could not be called to assist—or could not be punished for not assisting—because I can prove that I have a serious heart disease, and might easily come to a sudden end if I engaged in a scuffle.

An inspector (but not a constable) has the right to **enter any land or premises** where disease exists, or within an infected place or infected area, to inspect the same. Moreover, an inspector may enter any building or place on suspicion. "Suspicion" must always be based on reasonable grounds, which the inspector may have to prove if an action of trespass is brought against him. He may not enter on suspicion of anything he pleases, but only where he reasonably suspects that one or more of the following things are taking or have taken place:—

(a) That disease exists or has existed there within fifty-six days.

(b) That the carcase of a diseased or suspected animal is, or has been, kept, or has been buried, destroyed, or otherwise disposed of.

(c) That there is to be found some pen, place, vehicle, or thing in respect of which the law has been broken. Included in the word "law" you must read the regulations of the Board of Agriculture and of the local authorities.

(a) That the Diseases of Animals Act, or an order of the Board, or a regulation of a local authority has not been complied with or is not being complied with. An inspector may also enter any pen, vehicle, vessel, or boat if he thinks the Act, or an order or regulation, has not been, or is not being complied with.

Can you ask an inspector—or, rather, can you **demand from an inspector his reasons for entering?** Or may he just enter and then excuse himself on one of the grounds stated? The law is, that if an inspector comes into your farm, or on your land, or on to your boat, and says he desires to make inspection, you may require him then and there to state in writing upon what ground he enters. So that the inspector cannot make a sort of roaming inquiry.

PAINS AND PENALTIES.

The offences against the Act may be summarised as follows :—

(1) Disobeying a plain provision of the Act, or of an order of the Board, or a regulation of the local authority.

(2) Failing to give notice of disease with all practicable speed.

(3) Failing to keep an animal separate as far as practicable where you are required to do so by the Act or an order.

(4) Failing to give notice which the law requires you to give.

(5) If you have a licence to move animals into or out of a particular district, not producing that licence when you are asked to do so by a constable or an inspector.

(6) Refusing to admit an inspector or officer to his land, building, etc., which the officer is entitled to enter or inspect.

(7) Obstructing or impeding an inspector or an officer in the execution of his duty, or assisting in such obstruction.

(8) Throwing or placing, or causing or permitting to be thrown or placed, in a river or other inland water (including a canal), the carcase of an animal that has died of disease, or has been slaughtered as diseased or suspected. You must not even throw, or permit the carcase of such an animal to be thrown, into the sea, unless it is beyond the three-mile limit from the shore.

(9) With intent unlawfully to evade the law, doing something for which a licence is requisite without having obtained the licence—for example, moving cattle out of an infected area.

(10) Doing the thing licensed after the licence has expired. For example, if you have a licence permitting you to take a bull from your farm to a farm in an infected area within so many days, and you take the animal there after those days have expired, you will be liable, if you do it with intent to evade the Act.

(11) Using, or trying to use, a document which purports to be a licence and is not. A defence to this is that you really thought it was a licence—which it is for you to prove.

(12) Altering or forging a licence; using a licence that has been altered or forged, or attempting to use it.

(13) Making a false statement in order to obtain some licence, certificate, or instrument. It is a defence to show that the falsity of the statement was not known, and could not have been known with reasonable care. The statement in question must be materially false.

(14) Obtaining, or attempting to obtain, compensation in respect of an animal by means of some fraud or false pretence. For example, if you put forward a pedigree for a shorthorn heifer when in fact the beast had no pedigree.

(15) Digging up, or causing to be dug up, a carcase buried by the direction of the authorities. This is a most serious offence, and is usually punished by the infliction of the maximum punishment. The prosecution merely have to prove that you dug up, or caused to be dug up, the carcase, and that it was the carcase of a beast buried by order of the authorities. If you have any lawful excuse to make, or pretend that you have some authority in law for what you did, it is for you to prove it to the satisfaction of the Court. "Lawful authority and excuse" does not mean a fairy story to the effect that you thought you had a perfect right to dig up the carcase of a beast killed for pleuro-pneumonia in order to boil it for your pigs. That may or may not be an excuse morally. I express no opinion. I am quite sure, however, that it is no excuse in law.

(16) Using a vessel, vehicle, pen, or other place which the Board of Agriculture has by order prohibited the use of. This offence is committed where the Board has only prohibited the use of the thing in question for certain purposes, and the accused man has used them for any of the prohibited purposes.

The punishment for a first conviction under any of the above heads varies a little according to the magnitude of the offence. I mean by the word "magnitude," in this connection, the number of animals or quantity of stuff to which the offence relates. If an offence is committed:

(a) With respect to *more than four animals*, the offender is liable to a fine not exceeding £5 for each animal.

(b) Where the offence is not one relating to animals as such, but relates to carcases, fodder, litter, dung, or other things which are by the statute prohibited from importation or removal under certain circumstances, the offender is liable to a fine of £20, and £10 for every half-ton after the first half-ton. Thus, if you happen to have an outbreak of cattle plague on your premises, whereby it becomes an offence for you to remove litter from the sheds where your cattle were, and you remove a ton of such litter, you may be fined as much as £30.

(c) Where an offence does not relate to more than four animals, and does not relate to things which can be weighed, the maximum fine for a first offence is £20.

The penalties for second and subsequent offences vary according to the character of the offence. With regard to the offences numbered (1) to (8) inclusive, in the above list, the offender may be fined as above, or, in the discretion of the Court, may be sentenced to a term of imprisonment for one month with hard labour. But a second conviction only counts as a second conviction if it occurs within twelve months of the first. And you should bear in mind, also, that the conviction must be for the same offence: for instance, two offences of refusing to admit an officer, or two offences of throwing the carcase of a diseased animal into a river. If, on the 1st of January, 1902, you are convicted of refusing to admit an inspector to your cow-shed; and on the 10th of the same month you are convicted of throwing the carcase of a cow that has died of disease into a river, you cannot be sent to prison for the latter offence. You could have been sent to prison if it had been another conviction for refusing to admit an officer.

With regard to the offences under (9) to (16) inclusive, the Court may award two months' imprisonment instead of a fine, even on a first conviction. The usual practice is, unless the offence is very gross indeed, for the Court to inflict a fine on the first occasion and impose imprisonment the next time. In no case may the Court impose both fine and imprisonment. They may inflict hard labour if they choose to do so.

CHAPTER III.

DAIRYMEN, COWKEEPERS, MILK-FARMERS, MILK-SELLERS.

Regulations as to sale of milk—M.O.H. Acts—Inspection of suspected dairy—Report to local authority—Inquiry—Dairyman to be summoned to attend—Prohibition from supplying milk—How the Act works—Penalty—Dairyman to be summoned in his own district—Dairyman obliged to break his contract—Registration of dairies—Not everyone who keeps a cow—Only if he sells milk—Sale in a neighbourly way—Milk used for fattening calves—New dairy or cow-shed—Notice to local authority—Permission to occupy—Local bye-laws—Old buildings occupied before 1885—Certain minimum requirements—Contamination of milk—Milk-seller with infectious disorder—Milk-shop not to be slept in—Notice to disconnect w.c.—Dairymen keeping pigs—Penalty—How far local authority may legislate.

THERE is a notion abroad amongst medical men, and it is most likely true, that infectious diseases are frequently spread by dealers in milk—perhaps I should say, by milk. It has been deemed expedient, therefore, to adopt certain regulations that will enable local authorities to deal with places where milk is kept for sale, so that the Medical Officer of Health may deal with dairies, etc., which may be affected.

The Act in question is called Infectious Diseases Prevention Act, 1890. This Act does not apply to London or Scotland; and it only applies in England anywhere if the local authority of any sanitary district, whether rural or urban, has adopted the Act in that district. Adoption is by resolution, at a specially called meeting of a Borough or District Council. The resolution, when passed, must be advertised in the district, by advertising in a local paper and by handbills. It does not come into force at once; but the local authority fixes a time when it shall come into operation, which must be not less than a month after the resolution has been passed.

The gist of the Act is that the Medical Officer of Health may, if he is satisfied—or, rather, if some evidence is tendered to him that a person in the district is suffering from **infectious disease attributable to milk**—apply to a Justice of the Peace for an order to inspect the dairy from which the milk is said to come.

The magistrate may grant an order, and then the Medical Officer of Health, who might be accompanied by a veterinary inspector or a qualified veterinary surgeon, may inspect the dairy and all the animals on the place. If the Medical Officer of Health is satisfied, after his inspection, that the infectious disease in his district is caused by the milk supplied from this dairy, he reports to his employers, the local authority. Then the local authority issues a sort of summons or notice to the dairyman to appear before it and show cause why he should not be **prevented from supplying milk** to that district. The notice must be one which allows the dairyman at least twenty-four hours.

In many districts the dairyman who is accused of having a dairy or cows

whence infected milk comes, is allowed to appear before the local authority in question with counsel or solicitor to assist him, and to call evidence if he desires to do so. But, as a rule, when the Medical Officer of Health makes a report that the milk from the dairy is the cause of the infectious disease, that is enough. If the local authorities should then be convinced that the Medical Officer of Health was right, and that the dairy is a source of infection, they notify these facts to the sanitary authority and County Council (if any) of the district or county where the dairy is situated. They also notify the Local Government Board.

The local authority has no power absolutely to shut up the dairy under this Act. All it has power to do is to say that **the dairyman shall not supply any milk** to any person who is within its sanitary district.

I want you to notice that every local authority—District or Town Council, has jurisdiction in this matter over any dairy. Thus, suppose the Medical Officer of Health for the borough of Islington should find an outbreak of scarlet fever in his district. He tries various experiments and makes various researches to find out where the infection comes from. At last he is satisfied that the infection all comes from people who get their milk from a certain milk-shop. He goes to the milk-shop and ascertains from the shop-keeper that the milk supplied by him to his customers comes from a country village in Derbyshire. The Medical Officer of Health hurries down to the said farm in Derbyshire, and there finds that the children of the farmer are running about with curious looking faces. His medical eye at once tells him that all these children have had scarlatina. The M.O.H. for Islington returns to his own district, makes the report incriminating the milk-farm of the Derbyshire farmer, and then the Islington Borough Council write to that farmer and give him twenty-four hours to come before them and show cause why he should not be prohibited from sending milk to Islington. The farmer may know that he has no chance, and so he may stay away; or he may turn up at the Council meeting and protest. It is, however, pretty certain that in either case the Islington Borough Council will make an order that this farmer is not to send from his farm any more milk into the district of Islington. Should the farmer disobey, he is liable to a fine of £5, and a further fine of 40s. during every day on which he sends milk into Islington after he is ordered not to do so.

It is worth while noticing that the Islington Borough Council, if the farmer disobeys their order, and they wish to summon him, **must summon him in the district where he lives**—that is, they must take out a police-court summons against him in Derbyshire. They cannot put him to the expense of coming up to Islington to answer the charge.

In course of time the farmer's children will get well, his place will be disinfected, and his milk will become pure and wholesome. When that time arrives, he should apply to the Islington Borough Council again, who must, on being satisfied that the milk supplied has been changed or that the cause of the infection has been removed, forthwith withdraw the prohibition. I do not quite know what course can be taken, if any, against a sanitary authority

which refuses to withdraw a prohibition. If the authority says it is satisfied, or if its Medical Officer of Health is satisfied, that the place is now safe, and still the local authority refuses to withdraw its prohibition, probably a mandamus would be granted from the High Court to compel it to do so. But if the local sanitary authority simply says, "We are not satisfied," and no reason whatever is given, I do not see what remedy the milk-seller would have, unless, perhaps, a complaint to the Local Government Board.

It is expressly enacted in this statute that if a **dairyman is under contract** to deliver milk, and he is prohibited from delivering it by an order of the local sanitary authority, he is not to be liable for any breach of contract. Thus the Derbyshire farmer aforesaid might have had a contract with the Islington milk-shop to supply twelve gallons a day every day for six months. The supply being cut short by order of the Islington Borough Council absolves the farmer from his contract.

I have used the terms "dairy" and "dairyman" in my exposition of this matter. Let me say that "dairy" includes any farm, farmhouse, cow-shed, milk-store, milk-shop, or other place from which milk is supplied or in which milk is kept for the purpose of sale. And "dairyman" includes a cowkeeper, a purveyor of milk, or the occupier of any of those premises which are included in the compendious term "dairy" as previously defined.

Besides the regulation as to dairies contained in the 1890 Act, there are certain other very stringent rules not contained in an Act of Parliament, but in an order of the Privy Council, which order was made by virtue of the Contagious Diseases Act, 1878.

Every dairyman must be registered. In "dairyman" I include cow keeper and purveyor of milk. Every local authority must keep a register of people in their district who carry on the trade of cowkeepers, dairymen, or purveyors of milk. And it is not lawful for any person to carry on the trade of dairyman unless and until he has been registered.

Not everybody who keeps a cow need register himself. A man who keeps cows or carries on a dairy only for the purpose of making butter or cheese, or both, and who does not sell milk, need not be registered under this Act; nor need the person who keeps cows and sells the milk in small quantities to his workmen or neighbours for their accommodation.

In London there is a provision very similar to this, applicable to London only. And it has been held that a farmer within the London area who keeps cows is not liable to be registered as a cowkeeper. This particular farmer did not sell his milk at all. He only used it for fattening calves. He was really a meat-farmer.

Not only must a dairyman or cowkeeper register himself with the local authority, but he must, before he occupies any **new building**, give notice to the local authority. This body ought to inspect the building, and see that it is lighted and ventilated, and that provision is made for cleansing, draining, and water supply. And the regulation as to ventilation, cleansing, etc., is made to provide against all risk of infection and pollution. Not only must every building used as a dairy or cow-shed be properly ventilated, but there

must also be sufficient air space. Every local authority may make its own regulations on the matter, provided those regulations are reasonable.

As a rule, the local bodies, which we so frequently allude to as the local authority, publish bye-laws dealing with the proper construction of dairies and cow-sheds. If there are such regulations existing in your district, you should be particularly careful to observe them when you are building. In any case you **must not begin to occupy** any building, whether new or old, until you have given notice in writing to the local authority of your intention to do so, and a month's time has elapsed. Thus, if you intend to begin to use as a dairy a building not previously used as a dairy, you must send notice to the Town or District Council of your intention. The notice should state where the building is, and what you intend to use it for. Suppose you send the notice so that it reaches the office of the Clerk to the Council on the 10th of April, you may, unless you hear something to the contrary, begin to use the building on the 10th of May. If you begin to use it before that date, you render yourself liable to prosecution.

From the regulation as to ventilation and so on above mentioned, the Order in Council exempts cowkeepers and dairymen who occupied buildings **before the date of the Order (June 30th, 1835)**. I mean, as to such buildings it is not necessary to obtain any consent from the local authority to occupy them. But it is an offence to occupy any building, whether existing, and in order, and in use before the Order in Council or afterwards, unless the building or shed is sufficient in the following particulars:—

- (a) Lighting ;
- (b) Ventilation, including air space ,
- (c) Cleansing, draining, and water supply.

What I mean by the building or shed being sufficient is that in the aforesaid respects it is necessary and proper :

- (1) For the health and good condition of the cattle therein ;
- (2) For the cleanliness of milk-vessels used for containing milk for sale ;
- (3) For the protection of milk therein against infection or contamination.

The mention of contamination brings us to the subject of **the contamination of milk**. Of course, milk may be contaminated either at the dairy or at the shop. And it is unlawful for any cowkeeper, dairyman, purveyor of milk, or occupier of a milk-store or milk-shop to milk or handle cows, or handle vessels used for containing milk for sale, or to take part in the conduct of his trade or business so far as regards the protection, distribution, or storage of milk, if he is suffering from a dangerous infectious disorder. The prohibition also extends to him if he has recently been in contact with a person suffering from a dangerous infectious disorder. And it is equally punishable for a trader in one of these trades to allow any person, whether a servant or anybody else, suffering from a dangerous infectious disorder, or who has been in contact with a person so suffering, to milk cows, handle vessels, or take part in the milk business.

To the same sort of effect is a regulation forbidding cowkeepers, dairy-men, milk-shop keepers, etc., to use a milk-store or **milk-shop as a sleeping apartment**. This includes permitting somebody else to use it. Nor must the milk-shop or milk-store be allowed to be used for any purpose incompatible with the cleanliness of the shop, if it is likely to cause the contamination of milk.

The local authority may give any cowkeeper, milk-seller, etc., a month's notice to disconnect from the dairy or milk-shop any water-closet, cesspool, etc. At the end of a month, if communication is not cut off, an offence begins to be committed. A cowkeeper, dairyman, or purveyor of milk is not allowed to keep swine in any cow-shed; nor may he keep them in any other building used by him for keeping cows, nor in any milk-store or place where milk is kept for sale.

Anybody who is guilty of an offence against any of the rules and regulations aforesaid is **liable to a penalty** of £5. If the offence is a continuing offence, he is also liable to 40s. a day every day the offence continues after the local authority gives him written notice. Suppose, for example, you build a new cow-shed, and go into occupation of it without having given notice to the local authority, you are liable to a penalty of £5 for doing so. Moreover, if the local authority gives you notice, calling your attention to the fact that you are violating the law, and you still go on using the cow-shed, you may be fined anything up to 40s. a day for every day you have used the shed after you have received the notice.

Besides the aforesaid rules and regulations, there are, or there may be, **local rules and regulations**. The local rules and regulations are in the nature of bye-laws for the purpose of enforcing Orders in Council. These regulations relate to the following subjects:—

- (a) The inspection of cattle in dairies.
- (b) Regulating lighting, ventilation, cleansing, draining, and water supply of dairies and cow-sheds.
- (c) The cleansing of milk-stores, milk-shops, and milk-vessels.
- (d) Precautions to be taken against infection or contamination.

It should be said that the power of a local authority to make ventilation bye-laws includes power to make a bye-law that every cow-shed shall be so constructed as to give so much air space for each cow.

CHAPTER IV.

DEALERS IN GAME.

What is "game"?—Licensed dealers—By whom licences granted—Qualifications and disqualifications of applicant—Licence renewable yearly—Name to be up over shop or stall—Must not sell except at such shop or stall—May have separate licences for several shops—Partners only take out one licence for one shop.

AS I daresay you know—or, at least, have a general idea—no person may deal in game without a licence. The word "**game**" denotes the following varieties of beast and bird:—Hares, heath or moor game, black game, pheasants, partridges, grouse, and bustards. At one time game licences had to be taken out before the Justices of the Peace, very much in the same sort of way as liquor licences. However, since the Local Government Act, 1894, such **licences are granted** by the County Councils, including those which are the Councils of county boroughs.

The qualifications necessary to procure a licence to deal in game are both positive and negative. In the first place, the **applicant must be a householder or the keeper of a shop or stall** within the division or district where he applies for his licence. In the next place, he must not be an inn-keeper, or victualler, or licensed to sell beer by retail. He must not be the owner, guard, or driver of a mail-coach or other vehicle employed in the conveyance of the mails. Neither must he be a guard or driver of any stage-coach, stage-waggon even, or other public conveyance; he must not be either a carrier or a higgler.

The licence is an annual one, and must be renewed every year. It lasts from the day it is granted until the 1st of July next following. The meeting of the Council which grants licences generally takes place in the summer.

The effect of the licence is that the person to whom such a licence is granted may lawfully buy game at any place from any person who may lawfully sell game. But although he may buy game anywhere, he may not sell it anywhere. He may only sell it at one house, shop, or stall kept by him. And **by way of distinguishing his shop or stall** he is to affix to some part of the outside of the front thereof, and keep there, a board having thereon, in clear and legible characters, his Christian name and surname and the words "Licensed to deal in Game." A licensed dealer in game selling game at any place other than the shop or stall licensed is guilty of the offence of selling game without a licence. But it is provided that people in partnership, carrying on their business at one house, shop, or stall only, are not obliged to take out more than one licence to authorise them to deal in game at that house or stall. Thus, if Jones and Brown are in partnership, carrying on business at 107, City Lane, and they wish to sell game, either

Jones or Brown may take out the licence and it will cover the firm. But if they have two places of business, one at City Lane and the other at Winchurch Grove, and desire to sell game at both places, they must take out two licences. The best way in case of a partnership is for the persons to take out the licence jointly—that is, they should make an application to have a licence granted to both Jones and Brown, stating that they carry on business in partnership.

CHAPTER V.

DEALERS IN OIL.

The sale of petroleum—Dealers to be licensed by local authority—What is meant by petroleum—Includes all mineral oils—And oils made from bituminous substances—Testing point—No petroleum to be kept on unlicensed premises—Except in small quantities—Not more than three gallons—In pint vessels—Heavy penalty per day—Occupier of premises liable—Petroleum may be forfeited—Vessel must be labelled—Label to be conspicuous—And descriptive—Precautions during transit—Inspection of licensed premises—Samples for testing—Testing on licensed premises—Search warrants—Powers as to granting licences—May be perpetual—Or annual—Or renewable—Or conditional—Appeal to the Home Office—How to appeal—Time for appealing—Hawking petroleum—Local bye-laws—General regulations as to hawking—Construction of cart—Kinds of vessels—Master's liability for acts of servant—How master may escape—Powers of the police.

THE sale of petroleum is very strictly limited and regulated by Act of Parliament. Every person who sells or keeps petroleum of a certain kind must be licensed to keep it. In the case of everybody except the ship-owner who simply brings a cargo of petroleum into the country, all dealers in petroleum to whom I will call your attention must be **licensed by the local authority**—that is to say, the Borough Council, the District Council; in the City of London, the Court of the Lord Mayor and Aldermen; and in the County Council district of London, the County Council.

I briefly say that people who bring petroleum to which the Act applies in any ship or boat into the harbour, are subject to certain restrictions and regulations imposed by the harbour authority.

Let me begin by saying that “**petroleum**” includes any rock oil, rangoon oil, Burmah oil, made from petroleum or coal, or schiste, or shale, or peat, or other bituminous substance; and it also includes any products of petroleum or of any of the oils aforesaid. But no licence is required for the keeping or storing or selling of petroleum unless it is petroleum which, when tested according to the Government test, gives off an inflammable vapour at a temperature of less than 73° Fahrenheit. So that except when specially mentioned, I shall use the word petroleum as meaning what is commonly called “low-flash” petroleum.

You must not keep, even for private use, any petroleum on your premises unless you have a licence to do so, except you keep it *in very small quantities* and under very careful conditions and isolation. You may keep altogether in your place not more than three gallons at a time. But the three gallons must not all be kept in one tin or vessel. The oil must be kept in separate glass, earthenware, or metal vessels securely stopped, and each vessel containing not more than one pint. If you keep more than three gallons (or less if not securely fastened up in small quantities and in

the proper vessels) it may be forfeited, and you are liable to a penalty of £20 for each day during which the petroleum is so kept. The occupier is the person liable.

Another requirement of the Petroleum Act is that the vessel containing petroleum **must be labelled**—I mean the vessel containing low-flash petroleum. The circumstances under which a label may be attached to the vessel containing the petroleum are as follow:—

(a) When the petroleum is kept at any place after it has been imported, except during the seven days next after it has been imported.

(b) When petroleum is sent or conveyed by land or water, between two places in the United Kingdom.

(c) When petroleum is sold or exposed for sale.

The label in question must be written or printed in **conspicuous** characters. It must state what kind of petroleum is in the vessel. It must also contain the words "HIGHLY INFLAMMABLE." And it must also bear the name and address of the consignee and owner, where it is in a vessel kept more than seven days after importation; the name and address of the sender when it is in a vessel sent or conveyed between two places in the United Kingdom; and the name and address of the vendor when it is sold or exposed for sale. Any breach of the labelling regulations involves the offender in a penalty not exceeding £5.

As I have said, the enforcement of this Act is in the hands of the local authority, except with regard to ships or boats. And by way of enforcing it, the local authority may authorise any officer in its service to **purchase samples of any petroleum** from a dealer in the article for the purpose of testing it to see whether it be petroleum which requires a licence to keep it or deal in it, or whether it be petroleum above 73° flash-point. In addition, an officer appointed by the local authority may enter any shop or premises where petroleum is kept, and on producing his authority—that is to say, a copy of his appointment certified by the clerk to the council, mayor, etc., may demand to be taken into every place where petroleum is kept. And when he gets there he may test the oil. This power of inspection applies not only to cases where the oil is less than 73° flash-point, but also to cases where the oil is of a higher quality; for the object and purpose of allowing inspection and testing is to see that nobody stores oil of low quality unless he has a licence to do so, and unless he observes the precautions required to be observed.

A penalty is imposed upon any dealer in petroleum who refuses to show to such an officer all the places and all the vessels in which petroleum in his possession is kept.

In addition to this, Courts of Summary Jurisdiction (Petty Sessions, stipendiaries, magistrates, sheriffs) are empowered to grant search warrants authorising somebody named in the warrant to enter a *suspicious ship, house, or place to search* for petroleum. This search warrant can only be granted in respect of a particular place of which complaint has been made. And the officer to whom the warrant is granted may use any and

every means to gain admission to the place named in the warrant. He may also seize and remove any petroleum he finds there, which is kept there contrary to the Petroleum Act, and the vessel containing the same. If he makes a seizure, he must at once take proceedings under the Act to have the petroleum declared forfeited. If he should find and seize contraband oil in a cart, he may use the cart and the horse belonging to it to carry the petroleum away; and he must pay the owner of the cart and horse reasonable recompense for using the same.

Now let me deal with the question of **the licence required** by people who keep, sell, or deal in petroleum. It may be obtained from the local authority aforesaid upon application. Such application must be made according to the bye-laws made by the local authority in question, if there be any bye-laws. It is usual to apply by a letter addressed to the clerk to the local authority.

The local authority has very extensive powers as to **the granting or withholding of these licences**. A licence may be granted either for a short time or as a perpetual licence, or as a renewable licence. It may contain conditions as to mode of storage, the nature and situation of the premises on which the oil is to be kept, as to what other goods may or may not be brought on the same premises, as to facilities for testing, mode of carrying, and, generally, as to the safe keeping of the oil. It is usual, in my experience, for local authorities to make it a condition of a petroleum licence that the licensee shall not bring on his premises certain kinds of inflammable goods. If the licensee violates any of the conditions of the licence, his licence becomes void, and he is to be treated as an unlicensed person. He is also liable to a penalty of £20 a day during such time as he stores, or keeps, or deals in petroleum contrary to the conditions of the licence.

Any person who wishes to deal in or store petroleum on his premises, and who applies for a licence and is refused, may apply to the Home Secretary for a licence (or to the Secretary of State for Scotland in a Scotch case, or to the Lord-Lieutenant of Ireland in an Irish case).

The way to proceed is for the applicant for the licence to apply to the local authority to give him a certificate of the grounds on which it refuses the licence. I may also state that if the local authority says it is willing to grant a licence, but wishes to annex a condition with which the applicant is dissatisfied, he has the same right of appeal. And in the latter case he ought to ask it to give him a certificate of the reason why it attached the condition to the licence.

Within ten days after the date of his receiving the certificate, he must send it up to the Home Secretary, etc., together with a memorial. The memorial is a kind of petition beginning "Humbly Shewing," and going on to say what happened; and giving, as far as he can, reasons why the licence which the local authority refuses should be granted to him; or why the condition which the local authority attached to the licence should not be attached. The Secretary of State or Lord-Lieutenant, as the case may be, if he

thinks fit and proper, shall grant the licence, or remove the obnoxious condition or modify it. You are still under the jurisdiction of the local authority as regards the carrying out of the Petroleum Acts.

There is another Act dealing with the hawking of petroleum. This Act is limited in application to low-flash petroleum with a flash point of 73°

Subject to any bye-laws and regulations of any municipal borough, any person licensed to keep petroleum may hawk it either himself or by his servants. "Hawking" here means going about carrying petroleum to sell, whether with or without a horse or beast bearing or drawing burden. It includes all kinds of selling in the street, as well as going about from house to house or from town to town.

The petroleum hawker must observe the following regulations:—

(1) He must *not convey more than twenty gallons* at one time in any one carriage. The word "carriage" includes a vehicle drawn by hand.

(2) The petroleum must be *conveyed in a closed vessel*; and the vessel must be so constructed as to be free of leakage.

(3) The carriage containing the vessels must be *ventilated*, so as to prevent any evaporation from the petroleum mixing with the air in such proportion as to produce, or to be liable to produce, an explosive mixture.

(4) *No fire, or light, or explosive article* of a highly inflammatory nature may be brought dangerously near to the carriage.

(5) The carriage must be constructed and fitted so that the *petroleum cannot escape* in a liquid form, whether ignited or otherwise.

(6) Proper care must be taken to prevent petroleum escaping into any part of a house or building, or the curtilage thereof, or into a drain or sewer.

(7) When the petroleum is not being hawked, it must be stored in premises properly licensed.

(8) All due precautions must be taken to prevent accidents by fire or explosion, and to prevent unauthorised persons having access to the petroleum vessels. Moreover, every person concerned in hawking the petroleum shall abstain from any act tending to cause fire or explosion, if such act is not reasonably necessary for the purpose of hawking the oil. I should think this would prohibit any person employed in hawking petroleum from smoking tobacco.

(9) No article or substance of an explosive or inflammable character other than petroleum is to be in the carriage while it is being used for hawking. And the same prohibition applies to any article liable to cause or communicate fire or explosion.

If any person contravenes any of the nine regulations previously set out, whether he contravenes himself or his servants who were engaged in hawking do it, the licensee is liable to a penalty of £20 and to have his licence forfeited. But in order **to protect the master against the folly or carelessness of a servant**, it is allowable, if the licensee is summoned, for him to go before the magistrate as soon as the summons is served on him and there to complain that the act was actually committed by his servant. A summons is then issued and served upon the servant or other

person he has alleged to be the guilty party. Then the following events happen :—

First of all, the prosecution prove that the offence was committed. This renders the holder of the petroleum licence liable. But then he begins, and proves, if he can, that he is not in fact guilty. And the way he proves it is by showing to the Court that the act was done by his servant or some other person ; that he, the licensee, used due diligence to enforce the regulations ; and that the offence was committed without his consent or connivance. Of course, the servant or other person is heard in his own defence. But if the licensee convinces the Court of the guilt of the third person, the latter is convicted and fined, and the master goes free with his licence untouched.

If you happen to hold a petroleum licence that was granted before the 27th of August of 1881, and such licence contains a condition that you shall not hawk petroleum, the condition is void. Unless, that is to say, the condition was inserted by virtue of the powers contained in some local Act of Parliament granted to a municipal borough.

If a **constable** or any person authorised by the local authority believes, on reasonable grounds, that the Petroleum Hawkers Act is being contravened, he **may seize and detain the petroleum**, the vessels, and the carriage. Of course, he cannot detain them for ever. He must bring the matter before the local Police Court and charge the alleged offender with some offence. If the alleged offender is found guilty, the petroleum becomes liable to forfeiture.

CHAPTER VI.

PEDLARS AND HAWKERS.

Difference between the two trades—An old judge's description—Ancient hawker expected to cheat—Grammatically "hawker" means "shouter"—Local bye-laws on crying in the street—The legal distinction between hawker and pedlar—Pedlar goes on foot—A pedlar need not sell goods—Enough if he offers to work in handicraft—Exceptions—Commercial travellers—Book canvassers—Sellers of food—Sellers in markets and fairs—What is a commercial traveller?—Sells to dealers in the commodity—Pedlar must have certificate—Granted by the police—Qualifications—How to take out a certificate—Form of certificate—Certificate strictly personal—Not to be transferred—Nor lent—Procuring certificate by false representation—Appeal against refusal of certificate—How and when to give notice—Form of notice—How to conduct yourself—Certificate to be produced to constable or customer—Or person on whose premises you are found—Must allow copy to be taken—Pedlar without certificate may be arrested by anybody—Pedlar must show his pack to constable—Pedlar resisting police liable to conviction—Forfeiture of certificate—Statutory definition of hawker—Popular mistake—Hawker's licence—Obtainable from Inland Revenue—Preliminary certificate of character—Licence annual—And strictly personal—Cart and shop to bear name and description—Licence not to be parted with—Must be immediately produced if requested—Exemptions from licence—Commercial travellers—People who sell goods of own make—Basket-makers—Hawkers of food and coal—Beware local bye-laws.

I SUPPOSE I ought to begin this under the title of "Hawkers and Pedlars," upon the principle of giving precedence to the more dignified trade of the two. But let us consider, as far as we can and as far as is necessary, what hawkers and pedlars are, and of the law which specially affects them. If any person should find himself coming within the definition of a hawker or a pedlar, I advise him to refer to the preceding part of this work dealing with the sale of goods. Hawkerc and pedlars are people who carry on trade under licences.

I once came across a very curious definition of "hawkers" in an ancient law book written by a learned judge of the time of Queen Mary—I mean the predecessor of Queen Elizabeth. This sage says: "*Hawkers* is a word used in the Statutes for tinkers that go from place to place through the country, and by colour of the King's Letters Patents or placards, buy and sell brass and pewter, and cozen the King's people both in the weight and in the stuff." It always seemed to me a rather humorous definition. Under the terms of it, if you had a tinker going from place to place buying and selling brass and pewter who did not cozen (cheat) the King's people, he was not a hawker! But the definition shows us that the word was used in former times in a vastly different sense from that in which it is used now.

By its derivation the word "hawker" means a person who sells goods in a public place by lung-power—that is, a person who sells goods by crying or calling them in the street. Those of us who have to make a living by

professions and callings which demand concentration of thought, and whose lot is cast in town, know full well that hawkers invariably act up to the historical meaning of their trade name. I ought, perhaps, to say that in very many towns, perhaps in most towns, the local authorities have the power to make **bye-laws dealing with hawkers' cries**. It is quite impossible for me to deal with these bye-laws, seeing that they differ in almost every place. I would, therefore, say that under a general power such as is possessed by every urban authority (as far as I know) to make bye-laws for the better government of the town, bye-laws can be made prohibiting shouting, or undue shouting, in the streets or other public places by hawkers and pedlars.

But besides the generic meaning of the term "hawker," which would include practically all itinerant vendors of goods, the term has a specific meaning. There is, in law, a broad distinction between a hawker and a pedlar. A pedlar is a man, as his name implies, who goes on foot. And the legislature has used the term "hawker" to distinguish hawkers from pedlars. Roughly speaking, a hawker is an itinerant vendor of goods who travels with a horse or other beast of burden, while the pedlar is one who trades and travels on foot without a horse or other beast of burden. Now let me come to the statutory definitions.

There are two Acts dealing with pedlars, and there is one dealing with hawkers. *A pedlar within the meaning of the Act is:*

"Any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast drawing or bearing burden, travels and trades on foot, and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, and merchandise immediately to be delivered; or selling or offering for sale his skill in handicraft."

Now this definition is a very wide one, and it would include a very great many people whom the legislature did not intend or wish to include—such as commercial travellers. It would also include those people who are called book canvassers. But an exception is made in favour of **book canvassers** who sell or seek orders for books as agents—that is to say, who are selling books for an employer or principal—provided they are authorised in writing by the publishers of the books to sell or seek orders for those books. I presume this exception is made in the interests of learning and sound instruction.

There is another exception made in favour of the poor. It does not touch the poor alone; but it was, no doubt, intended to do away with any restriction on the sale of food to the poor, who largely depend on hawkers for the supply of certain goods and provisions. Therefore, **sellers of vegetables, fish, fruit, or victuals** do not need to take out a pedlar's licence. Neither do people who sell or expose for sale goods in any public mart, market, or fair legally established. I have hinted that it does not apply to commercial travellers. A commercial traveller seems to be, in the eye of the law, a person who sells goods to, or seeks orders from, people who deal in

those goods and who buy them to sell again—that is, who seeks orders from the trade, not from the public.

Every pedlar must have a certificate before he may legally trade. It is merely a police certificate. Any pedlar who trades without such a certificate is liable to a fine of 10s. for the first offence and £1 for any subsequent offence, these sums being in each case the maximum.

Yet a man must have certain **qualifications for a pedlar's certificate**. It is not everybody and anybody who can obtain it. The qualifications are that he shall have resided for a month previous to the application for the certificate within the police district where he applies. He must be prepared to satisfy the proper officer also that he:

- (a) Is above seventeen years of age;
- (b) Is of good character;
- (c) In good faith intends to carry on the trade of a pedlar. (The words "in good faith" apply to the intention to trade, not to the way he intends to carry on the trade.)

When a man wishes to take out a pedlar's certificate, he ought to go to the nearest police office. There he is entitled to a form upon which to make his application. This form must be supplied to him without any charge. It is printed with blanks to be filled in. Having filled in the form, the applicant takes it to the police office of the division or subdivision of the police district where he resides. Thence the application is sent to the chief constable; and if the chief constable is satisfied, on the report of the local police that the applicant is to have a licence, he signs a licence or certificate. This certificate runs as follows:—

"In pursuance of the Pedlars Act, 1871, I certify that William Styles, of 12, Bell Yard, Stourbridge, in the County of Worcester, aged 22 years, is hereby authorised to act as a pedlar for a year from the date of this certificate.

"Certified this 10th day of September, 1902.

"(Signed) ALFRED MONTMORENCY,

"Chief Constable of the County of Worcester.

"This certificate will expire on the 9th day of September, 1903."

It is not necessary for the embryo pedlar to go to the chief constable's office to get his licence. It is sent to the police station of the district where the pedlar resides—that is, to the police station at which he handed in his application. He then pays *five shillings*, and the certificate is duly granted to him.

Now I should warn all whom it may concern that a pedlar's certificate is not saleable: **it is strictly personal** to him to whom it is granted. A pedlar must not lend his certificate, or transfer or assign it to any other person. If he does, he is liable to a fine not exceeding 20s. for each offence; the borrower or buyer of the certificate making use of it is also liable to a fine not exceeding 20s.

There are certain offences punishable more severely. The first is **making false representations** with a view to obtain a pedlar's certificate. This is punishable by a fine not exceeding £2 if it is the first offence, and for any subsequent offence by a fine of the same magnitude with the addition of a term of imprisonment for six months, with or without hard labour. A like penalty is incurred by any person who forges or counterfeits a pedlar's certificate, or who aids in making or procuring a forged or counterfeited certificate.

There are folk in this world who believe that the police have a spite against them. It is a fact, unfortunately, that a policeman occasionally does bear a grudge against someone who he conceives to have done him an ill turn. Thus, you live in a village, and you offend the local police sergeant. Subsequently you have occasion to apply for a pedlar's certificate. When you hand in your application form, the sergeant, as in duty bound, makes his report upon it to the chief constable. He sends the report along with the application. And if he be a mean-spirited fellow, he may hint unutterable things, or say straight out that you are a person of the worst character and ought not to have a certificate. I need hardly say the chief constable, unless he knows you personally, relies implicitly upon the local police. Therefore, in a case such as I have hinted at, you would be most unlikely to procure a certificate. But **you can appeal** to Cæsar. Cæsar in this case happens to be what is called a Court of Summary Jurisdiction. A Court of Summary Jurisdiction in an English town is, as a rule, a stipendiary magistrate; in other parts of the country a Petty Sessional Court of two J.P.s; in Scotland the magistrates of a burgh.

The first thing to do is to **give notice**. You must give notice within one week after your application has been refused. You must give the notice to the chief constable; and you must give it in writing. This kind of thing will do:—

“To the Chief Constable of the County of Worcester,

“Alfred Montmorency, Esq.

“TAKE NOTICE that I intend to appeal at the sitting which happens “next after the expiration of the 14th day of September, 1902, before “the Justices for the Petty Sessional Division, of Stourbridge, against “your refusal to grant me a Pedlar's Certificate under the Pedlars “Act, 1871.

“September 10th, 1902.”

“(Signed) WILLIAM STYLES.

You will see from the form of the notice that you must give the notice for the next sitting of the Court of Summary Jurisdiction which happens after the expiration of the week in which your application was refused. Let me explain a little. Your application was refused on September 7th. You have up to and including September 14th to give notice of appeal. Your appeal must be heard on the first day on which the Court sits after the 14th. You must be ready; and you will do well to appear by a solicitor if the matter is very important to you. The Court is bound to hear the appeal,

and to make such order on it as appears just. Moreover, the Court may order either party to pay the expenses. I have said that the case is bound to be heard by the Court at the first sitting after the expiration of the week. This is not quite accurate. I should have said that the case must come on, but the magistrates may adjourn it if they like. If the appeal is allowed, they may grant a certificate; and their certificate has the same effect as if it had been granted by the chief of police.

A pedlar must produce his certificate to certain people if they ask him to do so. He must carry it about with him; for he may at any time be stopped and asked for it by a Justice of the Peace, or a constable, or an officer of police. Moreover, anyone to whom the pedlar offers his goods for sale is entitled to say, "Show me your licence." Further, there is a provision made which rather shows what the Pedlars Act was intended to regulate.

Suppose I have a park, or grounds round a country house not worthy, perhaps, to be called a park. I find a man there one day who appears to be lurking. I go up to him and ask him who he is and what he wants, and what business he has there. He may frankly confess that he is a trespasser, and has no business there whatever. He may admit that he is a tramp. On the other hand, he may allege that he is there on lawful business—to wit, that he is a pedlar who is going to offer his wares to the people at the lodge gates or the servants in the kitchen. I am entitled to say to him, "Produce your certificate."

Any pedlar who refuses, on demand, to show his certificate to a proper person and allow it to be read, or refuses to allow one of the persons mentioned to take a copy of it, is liable to a penalty not exceeding five shillings for each offence. And as a pedlar is a roving sort of blade as a rule, if a man is found acting as a pedlar and he refuses to show his certificate, or has no certificate to show, he may be summarily arrested and taken before a Justice of the Peace to be dealt with. It is not necessary to call a constable. The arrest may be made by the person authorised to demand the certificate, or by anyone else whom he can procure to help him.

There is another liability attached to the pedlar. He may be called upon **to show the contents of his pack** at any time by a police-constable or other police officer. The police-constable is not bound even to ask the pedlar to open his pack himself. The representative of the law may seize, open, and inspect the pack or other thing wherein the pedlar carries his wares without any preface whatever. And should the pedlar resist, whether successfully or unsuccessfully, should he refuse to allow his pack or bag to be opened and inspected, or should he resist the officer in that respect, he is liable to a penalty not exceeding 20s. He also may be arrested on the spot and conveyed before a Justice of the Peace to be dealt with. There are only two other matters to be mentioned. One is that in these days a pedlar's certificate is available all over the country. The second thing to be said is that if a pedlar is convicted of any offence under the Pedlars Act—that is, of any of the offences previously set out—the Court on convicting him of that offence, **may**

deprive him of his pedlar's certificate. And as a pedlar's certificate is only intended to be used by honest traders, and not by rogues and vagabonds, any pedlar who is found begging, and convicted of that offence by a magistrate, is deprived of his licence as a matter of course. In that case the magistrates convicting must forfeit the pedlar's licence.

Having dealt with the pedlars, the infantry of the army of itinerant street vendors, let us turn to the hawkers—the mounted division. By the statute called the "Hawkers Act, 1888," the hawker is thus defined:—

"Any person who travels with a horse or other beast bearing or
 "drawing burden, and goes from place to place or to other men's houses,
 "carrying to sell or exposing for sale any goods, wares, or merchandise,
 "or exposing samples or patterns of any goods, wares, or merchandise, to
 "be afterwards delivered, and includes any person who travels by any
 "means of locomotion to any place in which he does not usually reside
 "or carry on business, and there sells or exposes for sale any goods,
 "wares, or merchandise in or at any house, shop, room, booth, stall, or
 "other place whatever, hired or used by him for that purpose."

You observe, I hope, that the statutory term "hawker" is **by no means coincident with the popular use of the phrase**, even leaving out the part as to the horse or other beast of burden. You and I, in common conversation, would not say that a man was a hawker who did this—had a shop at Colchester, where he resides and carries on business; but was in the habit of occasionally hiring (for a few days or weeks) a shop in one of the neighbouring villages, and there selling goods. Yet he is a hawker, though he does not sell in the street.

NOW a HAWKER'S LICENCE differs totally from a pedlar's certificate. It is not a permit, as the pedlar's certificate is, but is more akin to a liquor licence. It is granted by the Inland Revenue authorities, and is procurable at the office of Inland Revenue, which is the place where you pay your income tax. It expires on the 31st day of March in each year, that being the last day of the Government financial year. The amount of duty payable is £2.

But before the Inland Revenue officer will grant you a hawker's licence you **must produce a certificate of character** to him; the certificate must be signed by a clergyman (or minister in Scotland) of the parish or place where the hawker resides, and also by two householders of the parish or place. Let us suppose you do not choose to get a clerical certificate. If you can satisfy a Justice of the Peace for the county or town in which you reside, or a superintendent or inspector of police for the district wherein the Revenue officer resides, that will serve you. The certificate must simply be to this effect:

"I [or we] hereby certify that William Jinks is a person of good character, and a proper person to be licensed as a hawker.

"(Signed) ALFRED INGTOEN (Rector of Barlter),
 ARTHUR AURSTEN, 12, High St., Barlter,
 WILLIAM MURPHY, 14, High St., Barlter."

The licence is to be **renewed from year to year**; but except at the first time of asking—that is to say, where the licence is newly granted—there is no necessity for any certificate of character. It is a serious offence punishable by a fine of £50 for anyone to forge or counterfeit such a certificate of character as is required by the Hawkers Act. When the Excise licence is granted, it is available all over the country; but it is very **strictly personal**.

The hawker may not let, hire, or lend his licence to another. He must also have his name painted, or written, or printed visibly and legibly on every vehicle and every package used for the carriage of his goods. Further, he must have his name so written, painted, or printed upon every shop or room in which his goods are sold, and upon every handbill or advertisement which he distributes or publishes. And after the name, the hawker must have the words, “licensed hawker.”

I would have you know that no one except a licensed hawker is allowed to call himself so. Anybody who uses the words “licensed hawker,” or any other words intended to make people believe that he carries on the trade of a hawker or is licensed to carry on the trade, is liable to a fine of £10. Moreover, anybody who trades with or under the cover of a licence granted to a person not his master is also liable to the same fine. The same penalty applies to a man who is trading under a licence which has expired. Therefore, if you have had a hawker's licence which you have allowed to run out because you have determined not to be a hawker any longer, and you do not paint out from your cart or from off your shop the words “licensed hawker,” you are liable to a fine.

Although a hawker is allowed to employ servants to hawk for him, it will not do for a hawker to employ a great many servants. This for the reason that if any one of his servants is asked to produce the hawker's licence under which he is trading he must immediately do so. If he does not he will be liable to be forthwith arrested, taken before the Justices of the Peace, and fined, or imprisoned in default of paying the fine. So that the liberty to employ servants practically comes to this: That if the hawker pleases he may take about with him any servants he chooses to assist him. Also, if he does not wish to go out himself he may send a servant out in his stead, taking care to give that servant the licence to carry. It follows, therefore, that if the hawker wishes to employ six different servants to trade with six different carts, he cannot do it under one licence.

There are **certain exemptions** from the necessity for taking out a hawker's licence. The first is the commercial traveller—that is to say, a man who sells or seeks orders for goods supplied to people to sell again. These people are not hawkers at all.

The next person, however, or rather the next two classes of persons, are really hawkers. The first class is the **real worker or maker of any goods**, wares, or merchandise, and his children, apprentices, and servants usually residing in the same house with him, selling or seeking orders for goods, wares, or merchandise made by such real worker or maker. This covers the case of (for instance) a basket-maker. Such a person commonly makes baskets

himself, very likely with the assistance of a wife, or child, or servant, and then goes round selling from house to house. He need have no licence.

The next exemption is one which applies to pedlars also. People who hawk fish, fruit, victuals, or coal do not need a hawker's licence under the Hawkers Act. But I wish you to take notice that there are in some places **local Acts of Parliament** whereby fish hawkers and others are not allowed to trade within that locality without a licence from the borough magistrates or the Corporation—that is to say, though free from the necessity for a Government licence, the food hawker may be bound to take out a municipal licence. A hawker going to live in a new town, or about to extend his rounds to a new town, should *make inquiries* of the police as to whether any municipal licence is required.

The last kind of person exempted is one who sells, or exposes for sale, goods, wares, or merchandise in any public mart, market, or fair legally established and authorised.

CHAPTER VII.

PAWNBROKERS.

What is a pawnbroker?—When is a second-hand furniture-dealer a pawnbroker?—Agreement to re-sell—Licences for a year—THE PAWNBROKER AND THE AUTHORITIES—Revenue licence necessary—Price thereof—Certificate of magistrate first—Or of District Council—IN SCOTLAND magistrates or J.P.s—Exception—No certificate for “old” licence-holders—Or their successors in business—Even in different shop—The important date—A case of succession—An “old” pawnbroker re-entering business—Notices to be given before applying for certificate—To whom—Certificate can only be refused on three grounds—The character of the applicant—How a pawnbroker may lose his licence—GENERAL OBLIGATIONS of pawnbrokers—To keep pledge book—Columns and their contents—When entered up—Name to be up over door—Notices exhibited in shop—Pawnbroker compelled to give a ticket—If customer will not take it, no business to be done—The rate of profit—Receipt if required—Not to take pawn from child or drunken person—Nor purchase a pawn-ticket—Nor lend out one—Nor employ too young assistants—Days of closing—Nor buy articles pledged with him—Except at auction—Nor sell article pledged—Duty to be suspicious—Not to take in unfinished goods from workpeople—His duty to arrest on suspicion—Exonerated even if wrong, provided he acts reasonably—May detain article offered in pawn—What is a reasonable suspicion?—The prodigal rightly suspected—Compensation for trouble—Search for stolen goods—Property unlawfully pawned—Pawnbroker may be ordered to return it to the owner—With or without money—Obligation to attend and produce books in court.

A pawnbroker is described in Section IV., Book IV. (p. 922).

I **TOUGHT** to say that the licences referred to in the succeeding part of this chapter are in existence for a year with regard to the same shop, even if the pawnbroker himself dies. I mean that, suppose a pawnbroker dies, his executors or administrators can carry on his business under his licence until the licence expires on the 31st of July. The executor or administrator is answerable for any breach of the law that takes place during that time. But he is not answerable out of his own pocket unless the breach of the law occurred through his own personal act or his own personal neglect. Penalties inflicted on him for offences, except where he is declared to be personally liable, are to be recovered out of the pawnbroker's estate.

I have already said something about pawnbrokers in that part of this work which deals with pawnbrokers and lenders, but I confined my exposition there to an exposition of that part of the law of pawning which related to the transactions between the pawnbroker and his customer. In response to some requests I now proceed to give a short statement of the statutory provisions which relate to the pawnbroking trade as between THE PAWNBROKER AND THE PUBLIC AUTHORITIES.

The pawnbroker cannot trade unless he has an Inland **Revenue licence**. This licence is a yearly one, expiring with the financial year, and is obtainable

at the price of £7 10s. A pawnbroker must have a separate Revenue licence for every shop in which he trades.

Now, before a pawnbroker can get an Inland Revenue licence for any shop he must **procure a certificate**. In county districts in England these certificates must be procured from the District Council. In other parts of the kingdom they must be procured from the stipendiary or other magistrate authorised to administer justice in the town. In Scotland certificates are granted by magistrates of burghs and Justices of the Peace of counties at the same times and places when and where liquor licences are granted. The certificates are certificates of character.

There is, however, **a notable exception to the rule**. The Act of Parliament which imposed upon pawnbrokers the necessity for procuring the certificate of character is an Act passed in the year 1872. Prior to that Act, Inland Revenue licences were required, but they were granted without certificate of character. Now, as I have frequently had occasion to say, Parliament usually respects a vested interest. And when the Pawnbrokers Act, 1872, was passed, it was recognised that the pawnbrokers already licensed under the former law had a vested interest. This vested interest was the right to obtain a pawnbroker's licence without producing a certificate of character. And Parliament enacted that this privilege should extend not only to persons who were at the commencement of the Act licensed pawnbrokers, but also to their executors, administrators, assigns, or successors. Let me premise my observations by saying that the Act commences on the 1st of January, 1873. Now the effect of the law is that **anyone who was a licensed pawnbroker before the 1st of January, 1873**, has a right to obtain an annual Excise licence merely on payment of £7 10s. Further, if he should die, his executors or administrators have a right to a licence to carry on the same business as long as ever they please without a certificate of character. Further, if the pawnbroker or the pawnbroker's executors assign the business and licence to another person, that person has the right to have an Inland Revenue licence without a certificate of character. Still further, any successor of the old pawnbroker who takes up and carries on the business of a man who was licensed before 1873 can claim exemption from the certificate of character.

Let me give you a couple of cases that were decided not very long ago, and which show the importance of this exemption. Prior to 1873 a man named Creshull had carried on business as a pawnbroker at Seven Sisters Road, Holloway. After 1872 he opened another shop at Stamford Hill. Being a person who had carried on a pawnbroker's business under an Excise licence before the Pawnbrokers Act, he was entitled to a licence for his new shop without any certificate of character. Soon after opening the Stamford Hill shop Mr. Creshull died. He appointed his widow executrix of his will, and she carried on the business at Stamford Hill until 1882. Then she got tired of it, and assigned it to a man named Pockett. Pockett had been a licensed pawnbroker in 1872. He carried on the business for three years only, and in 1885 sold it to a man named Ohlson. Ohlson

had not been a licensed pawnbroker before the 1st of January, 1873, and therefore was not personally entitled to any exemption from the certificate requirements. For some little time, however, the Inland Revenue authorities granted Mr. Ohlson his Revenue licence without requiring a certificate of character. But when he applied in 1890, they refused to grant him the licence until he produced a proper magistrate's certificate such as is required by the Act of 1872. He made application to the High Court with a view of compelling the Inland Revenue to grant him a licence without a certificate.

The High Court held that he was entitled to that licence, and was not bound to obtain a certificate of character. The reason was that he was the "assign" of Creshull, the original pawnbroker. He was not his direct assign; but he was his assign and successor through the widow and Pockett. Moreover, he was the assign directly of Pockett; and Pockett had been a pawnbroker duly licensed before 1872.

Another case was tried in the High Court at the same time as the case from Stamford Hill. In that case a man named Garland had been in partnership with his brother since the year 1866. The brothers had taken out a pawnbroker's licence in their joint names. In 1887 they dissolved partnership, and the brother kept the business. Garland remained out of the pawnbroking business for three years; but in 1890 he made up his mind to go into harness again; and, consequently, he applied to the Inland Revenue authorities for a licence. They asked him to produce a justice's certificate of character. He replied that he was not a new pawnbroker, but an old pawnbroker. That he had been a licensed pawnbroker before the Act of 1872; and, therefore, that he was entitled to a licence merely on paying his £7 10s.

It was argued against Garland's claim that the licence of a pawnbroker only applied to him with reference to the particular business which he carried on. In other words, Garland's licence, which he had held from 1866, came to an end as far as he was concerned in 1887, when he ceased to own the business for which he and his brother had been licensed. But the Court held that it was not so; on the plain words of the Act of Parliament, they said, they were bound to find that anyone who had held a pawnbroker's licence before the commencement of the Act of 1872 was entitled as a right to a new pawnbroker's licence every year whenever he chose to apply for it. Having now stated fully the exemptions from the ordinary rule, let us go on to consider the ordinary rule and how it applies, and what must be done by a pawnbroker who started business as a pawnbroker after 1872. When I say "started business," I mean that the man has actually started a new business, and is not the assign or successor of an old pawnbroker who was licensed before the Act. Suppose you intend to start, *de novo*, a pawnbroker's shop. The first thing you do is to prepare to apply to the District Council or the magistrates for a certificate. Before you can apply you must **give certain notices**. These notices are very similar to those which must be given by a person who intends to apply at Licensing Sessions for a new licence. You send notice by registered letter to

the overseers of the poor of the parish (inspectors of the poor in Scotland) where you intend to carry on business. You also send notice to the superintendent of police of the district. I may say that these notices need only be sent where you are applying for a licence for the first time. You must give the notice twenty-one clear days before the day on which the application shall be made. You will find something about calculations as to time on p. 1433. The notice must state the name and address of the intending pawnbroker, and a statement that he intends on such-and-such a day to apply to (say a stipendiary of the borough) for a pawnbroker's certificate.

The notice must also be affixed and maintained on the principal door of the church or chapel of the parish. If there is no church or chapel, then on some other conspicuous place in the parish. The church-door notice must be so affixed on two consecutive Sundays within the twenty-eight days before the application.

But although preliminaries for obtaining a pawnbroker's licence are uncommonly like those applicable to a liquor licence, the actual process is not anything like so formidable. The District Council or magistrate has an unlimited discretion to grant or refuse your application. He **can only refuse it on three grounds**, or one of the three. They are :

- (1) That the applicant has not given the proper notices, either because he has not given them to the proper persons or in the proper time.
- (2) That the applicant has failed to produce satisfactory evidence of good character.
- (3) That the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character.

If a person acts as a pawnbroker without having in force a proper licence, he is liable to an Excise penalty not exceeding £50.

A pawnbroker may lose his licence if he is convicted of certain crimes. I want you to notice that the convictions in question are not to be convictions by a Court of Summary Jurisdiction—for example, Justices of the Peace or police magistrates. The conviction must be on indictment. If a pawnbroker is convicted on indictment of any fraud in the carrying on of his business, or of receiving stolen goods knowing them to be stolen, the Court before whom he is convicted may order his licence to be forfeited. You see, the licence does not fall to the ground of itself on conviction. It is only forfeited if the judge presiding over the Court orders it to be forfeited. I may say, however, that a pawnbroker who is convicted of receiving stolen goods knowing them to be stolen stands a very strong chance of being deprived of his licence. I have known at least one case where a judge completely forgot to deprive the pawnbroker of his licence. And a very bad case it was too. But unless you come before an absent-minded judge of this kind, you will in all human probability see your licence vanish into thin air.

GENERAL OBLIGATIONS OF PAWNBROKERS.

I am not about to treat now of the contract between the pawnbroker and his customer so far as it concerns those two alone. I am only about to discuss the general obligations of the pawnbroker under what may be called the police law. A pawnbroker is one of the few persons who is **obliged by law to keep books**. He is also obliged to keep certain documents. When I say that he is bound to keep books, I mean that he is bound to keep one book. This book is called a pledge book. It must have written in it at the top the words,

“PLEDGE BOOK

“of John Jones, Pawnbroker,

“the 1st day of August, 1902.”

The date is the date on which the book begins. The book must be ruled in columns, to contain the following particulars: “Date of redemption; profit charged; amount of loan; the number of pledges in the month; name of pawner; address of pawner; name of owner, if the pawner is not the owner; address of owner if not the pawner; list of articles pawned as described on the pawn-ticket.” I should advise every pawnbroker to buy proper books ruled in columns. Such books are sold by stationers. Now this book must not only be kept in the shop, but it must be properly filled in. The last five things must be **filled in** in the proper columns of the book **on the same day** on which the pledge was made; or within four hours of the end of the day. Thus, for all pledges made on Saturday, the name and address of the pawner, the owner of the goods and the description of the goods, must be filled in some time before 4 a.m. on Sunday. The fine of £10 is incurred if this is not done.

The pawnbroker must **keep exhibited** in large characters over the outer door of his shop his Christian name and surname, with the word “Pawnbroker.” He must also keep in his shop, in a conspicuous place, in any box or place provided for persons pawning or redeeming pledges, the information required to be put on the various kinds of pawn-tickets. This is as follows:—

NOTICES

(a) *For loans of 10s. and under.* The pledge must be redeemed within twelve calendar months and seven days from the date of pledging. At the end of that time it becomes the property of the pawnbroker.

If the pledge is destroyed or damaged by fire, the pawnbroker will be bound to pay the value of the pledge after deducting the amount of the loan and profit, such value to be the amount of the loan and profit, and 25 per cent. of the amount of the loan.

If the ticket is lost, mislaid, or stolen, the pawner should at once apply to the pawnbroker for a form of declaration to be made before a magistrate, or the pawnbroker will be bound to deliver to any person who produces this ticket to him and claims to redeem the same.

(b) *For loans of above 10s. and not above 40s.* If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale, the pawner may inspect the entry of the sale in the pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of any pledge may be set off by the pawnbroker against surplus on another (here follows the same information as is contained in the last two paragraphs of "a" as to pledge being destroyed by fire and ticket being mislaid).

(c) *For loans of above 40s.* The same as for loans above 10s. and not above 40s.

A pawnbroker must give a ticket. This is not a matter between him and the pawner. It is a matter between the pawnbroker and the law. If a pawnbroker takes in a pledge without giving a pawn-ticket, he is guilty of an offence for which he may have to pay a £10 fine. If the pawner refuses to take the ticket, the pawnbroker must not take in the pledge. The pawnbroker must not take profit on a loan on a pledge at a greater rate than is specified in the Act. What that represents will be found set out in full in the chapter on Borrowers and Lenders. The pawnbroker must give a receipt at the time of redemption for the amount of the loan and profit paid to him, if he be required to do so by the person redeeming. He need not put a receipt stamp on it unless the profit is 40s. or more. If a pawnbroker does not give a receipt when required he is liable to a penalty of £10.

When pledges are sold by auction—which is how all pledges for more than 10s. and up to £10 must be sold, the pawnbroker is absolutely bound to keep an account of the sale in a book (*see* p. 925).

A pawnbroker must not do any of the following things, under penalty of a fine of £10 for each one :—

(1) Take an article in pawn from a person appearing to be **under twelve years of age or appearing to be intoxicated**. By the Metropolitan Police Act there is a £5 penalty for receiving a pledge from a person under sixteen, and the same law has been made for the City of London. There are also in many local Acts of Parliament applying to cities and boroughs of the United Kingdom similar provisions, prohibiting the taking of pledges from persons appearing to be under sixteen.

(2) Purchase, or take in pawn, or exchange a pawn-ticket issued by a pawnbroker.

(3) Employ either as a servant or apprentice any person under the age of sixteen to take pledges in pawn. This extends even to the members of the pawnbroker's family, and it was enacted, no doubt, to prevent youthful assistants being victimised by thieves.

(4) Carry on business on Sunday, Good Friday, or Christmas Day, or on a day set apart for a public fast, humiliation, or thanksgiving. In Scotland, however, a pawnbroker need not close either on a Good Friday or on Christmas Day.

(5) Under any pretence **purchase**, except at a public auction, **any pledge while in pawn** with him. That is to say, if I pledge my watch at a pawnbroker's shop for 30s., and I afterwards go to the pawnbroker and say to him, "You can have the watch if you will pay me another 10s.," the pawnbroker must not accept the offer. When he, at the end of the proper time, auctions off unredeemed pledges, he is allowed the privilege of bidding at the sale. That is all.

(6) Offer any pledge to be redeemed while it is in pawn with him with a view to his purchasing it. This is in order to prevent that being done indirectly which is forbidden to be done directly by the preceding paragraph. It comes to this: that if I go to the pawnbroker's with my watch as above stated, and afterwards go to him and offer to sell the remainder of my property in it for 10s., the pawnbroker is not allowed to evade the law by saying, "I can't do it; but if you will redeem the pledge I will buy the watch from you."

(7) Make any contract or agreement with any person pawning or offering to pawn any article, or with the owner of an article offered in pawn, for the purchase, sale, or disposition thereof within the time of redemption. This again is a precautionary clause, forbidding the pawnbroker to do by indirect means what he is not allowed to do by direct means.

(8) **Sell or dispose of any pledge** pawned with him except in the manner and at the time authorised by the Pawnbrokers Act. As to this, it should be said that with regard to pledges pawned for above 10s., the time of sale is at the expiration of a year and seven days from the day of pawning, and the manner of sale is by public auction duly advertised.

The pawnbroker doing any of the eight things which this Act says he is not to do, is liable to a fine of £10.

A pawnbroker should be particularly careful as to the receipt of pledges. He must not take in pawn, knowingly, any linen, or apparel, or unfinished goods, or material entrusted to any person to wash or mend or make up or work upon in any way. What I mean is, that if a pawnbroker knowingly takes in from a tailoress who takes work home the cloth or article which she has been given to work up, or takes from a washerwoman the linen that has been sent to her to be washed, the pawnbroker is guilty of the offence here described. The knight of the three golden balls should, therefore, be careful as to taking in any unfinished or half-finished articles. I take it that if a pawnbroker takes in a half-finished coat from a person whom he knows to be a working tailor (I mean a tailor who is not a master), he will be convicted of the offence. The penalty for this offence is a fine not exceeding double the amount of the loan.

It is a pawnbroker's **duty to be suspicious**. He should trust nobody unless he knows him; by which I mean that he should trust nobody unless he knows him to be a person of respectability and honesty. More than one pawnbroker has had to suffer rather severely for being of too unsuspicious and confiding a disposition. If a pawnbroker reasonably suspects that an article has been stolen, or otherwise illegally or clandestinely obtained, it is

the pawnbroker's duty to seize the person and the article, or either of them. By which I mean that if he can seize them both he ought to, and detain them. If he cannot seize the gentleman by reason of the latter being the quicker runner, he should at least keep the article. Having made his capture, he should hand it, or them, over to a police-constable as soon as possible. The proper way to go to work, if you have a reasonable suspicion, is for you to send your assistant round to lock the door. Having thus bagged your man, you send out the assistant by another way to fetch a policeman. Once the policeman appears you have finished, so far as responsibility is concerned.

Of course, if you arrest the man, or seize his property, without a reasonable suspicion, you will render yourself liable to an action, which is a far more serious matter than when you merely detained the article in pawn. But you have at least one safeguard. The question of **whether you had a reasonable suspicion** or not is a question for the judge who presides over the trial of the case. And a judge will invariably deal tenderly with a pawnbroker who has tried to assist the course of justice, though that pawnbroker may have made an honest mistake. Suppose a man comes into your place and offers for pledge a valuable ring. You know nothing about him. He hardly looks the kind of man, from his dress and general appearance, to be the owner of so valuable a possession. You ask him where he got it from; he stutters, and stammers, and hesitates. You ask him when he became possessed of it; he again flounders in his reply. You take his shabby appearance together with his confused method of answering, and you detain both him and the ring, and hand them over to a constable. It may afterwards appear that the man came by the ring quite honestly, and in the way he said he came by it. Still, you would stand a very good chance, indeed, of escaping if he were to bring an action against you for false imprisonment and illegal detention of his property.

A pawnbroker who has put himself to trouble, expense, and loss of time in seizing and detaining a person suspected by him, should, when the case goes into Court, ask the magistrate to allow him **some compensation**. If the magistrate thinks the pawnbroker has acted in a meritorious manner, he has power to order him to be paid out of the public funds a reasonable sum. Another occasion when a pawnbroker has a right to seize a person and property is when someone comes to him with a pawn-ticket which the pawnbroker reasonably suspects to have been counterfeited, forged, or altered. In such a case the pawnbroker may act in precisely the same way as when he reasonably suspects a person of having unlawfully come by the goods which he offers in pawn.

If the owner of any linen, apparel, or unfinished goods, such as I have already touched upon, believes them to have been pawned with a pawnbroker by the person to whom they were entrusted, he may make an affidavit, or statement on oath, that there is good cause to suspect that a pawnbroker has taken the goods in pawn. In such a case, if the justices think there is reasonable ground for his suspicion, they may issue a search warrant to search the shop of the pawnbroker in business hours. A pawnbroker who refuses

to open his shop, or permit it to be searched when requested so to do by the constable authorised by the warrant, is liable to be fined £10. Moreover, the constable may break open and enter the place and search; and if the pawnbroker, or anybody else, opposes or hinders the search, he is liable to another penalty of £10. If the missing articles, or any of them, are found in the search, and the owner can satisfy the justices of the Court that they are his, the Court may order the property to be restored at once.

The Delivery-up of Property Unlawfully Pawned.—A pawnbroker is in both a better and a worse position than other people. He is in a better position, because if property is pledged with him which the pawnier had no right to pledge, he may still be entitled to recover his money before he parts with the pledge. He is in a worse position, because even if he takes a pledge in open market, he may be required to hand it over without having any part of the loan back. Let me explain what I mean. Pawnbrokers are very often victimised by people who pawn with them other people's property. Now when a person is convicted in a Court of Summary Jurisdiction of knowingly and designedly pawning another person's property without authority from the owner, the Court may order the goods to be delivered up to the owner. But this order may be accompanied by the qualification that the owner of the goods shall repay the pawnbroker either the whole or some part of his loan before the goods are delivered up.

Another case where the Court may make a similar order is where a man is convicted of feloniously taking or fraudulently obtaining the goods which he has pawned with his pawnbroker. By "feloniously taking" is meant **stealing in every form**—either by larceny, embezzlement, or whatnot. Whenever it appears in any proceedings before the Court of Summary Jurisdiction that goods brought before the Court have been unlawfully pawned the Court may order a pawnbroker to give them up for or without payment of the loan, or part of it. You observe that the Court has no right to allow the pawnbroker any interest on his money, but only the amount of the loan, or some part thereof.

Every pawnbroker is **bound**, at any time, when ordered or summoned by a Court of Summary Jurisdiction, **to attend** before that Court and produce such of his business books and papers as the Court requires him to produce. The penalty for failing to obey is a maximum fine of £10.

CHAPTER VIII.

BAKEHOUSE REGULATIONS.

Chapter does not apply to factories—Bakehouse sanitation—Landlord and tenant both liable—Regulations do not apply where premises occupied as bakehouse before June 1st, 1883—What is an insanitary bakehouse?—Power of magistrates to order alterations—The attitude to adopt—A generous offer—Specified sanitary regulations in populous places—Paint, lime, soap-and-water—How often—Sleeping-rooms next to bakehouses—Unlawful unless fully partitioned off—And ventilated—Wholesale bakeries—Different Administration—What is a retail bakehouse?—Ventilation.

BAKEHOUSES.

BAKEHOUSES where power-driven machinery is used will come under the Factory Acts as factories in the ordinary way. The following regulations apply to some extent to all bakehouses. Other of the rules only apply to retail bakehouses.

There are very strict statutory provisions made for **the sanitation of bakehouses**. It is forbidden to let for the purpose of a bakehouse, and equally to occupy for that purpose, any place which is insanitary. (Except, according to the usual custom, vested interests which were left alone when the Act in question was passed; so that you may take it that the bakehouse regulations have no application to premises or rooms which were occupied as bakehouses before June 1st, 1883.) Anyone letting such an insanitary place is liable to a fine of 40s., with an additional 5s. for every day during which the offence continues.

You observe that it is **not only the baker, but the landlord** of the bakehouse who is liable. The question arises, therefore, What is an insanitary bakehouse within the meaning of the Act? Well, an insanitary bakehouse is one which has a water-closet, earth-closet, privy, or ash-pit within the bakehouse, or directly communicating with it. It is also insanitary if the water-cistern supplying the bakehouse is the same as that supplying the water-closet. It is again insanitary if any drain or pipe for carrying off faecal matter or sewage has an opening within the bakehouse. The word "opening," of course, includes ventilating hole.

I have told you that vested interests are preserved; that is, that a bakehouse used as such before June 1st, 1883, is not obliged to comply with the above requisites. Still, people are not allowed to bake bread in any kind of place they like, and send it out to be eaten by their unsuspecting fellow-creatures, full of every kind of disease germs. Therefore it is open to the local sanitary authority, or the local factory inspector, as the case may be, to inspect all bakehouses, and if he thinks any bakehouse unfit for use as a bakehouse on sanitary grounds, he may summon the baker.

And the fine which may be inflicted is 40s. for the first offence and £5 for any offence thereafter.

But the mere fining of the offender, salutary though it may be for the good of his soul's health and the improvement of his morals, will not turn his insanitary bakehouse into a sanitary one. Wherefore the magistrates who hear the complaint may order anything in reason to be done to the bakehouse. These works may be either in addition to the fines before referred to or in substitution for them. A good deal will depend upon the general views taken by a magistrate, and also upon the kind of case it is.

If you happen to be summoned, and do not wish to pay a fine, I should advise you to take up an attitude not merely of resistance but also of willingness to comply with all reasonable requirements. Say, or get your solicitor to say for you, that you do not admit your premises to be insanitary, or unfit to be used as a bakehouse; but at the same time, if their worships should come to the conclusion that for the public good you ought to amend your bakehouse in any way, you are willing to do so as reasonably quickly as you can. This offer is not so very generous because you are only offering to do what the magistrates can compel you to do without any offer on your part. Still, it shows a willing spirit, and that may have some effect on the penalty imposed. And you should remember that if the magistrates do order you to execute any improvement to your bakehouse, and you do not execute that improvement, you will be liable to a fine of £1 a day for every day you are in default. The magistrates must, however, give you a reasonable time within which to get the work done.

There are certain **specific sanitary regulations** to be observed by all bakers who live in what I may call populous places. I mean places with a population of more than 5,000 souls according to the last census. I do not know of any particularly valid reason why these sanitary precautions should not be observed by bakers in districts of smaller population. Suffice it to say that the legislature has seen fit to spare the village baker while hitting his brother who resides in a more thickly populated locality.

These sanitary regulations relate to **painting, lime-washing, and washing**. By way of keeping the bakehouses clean, every bakehouse must either be painted, or varnished, or lime-washed, or done up in a combination of the three—that is to say, the part to which I draw your attention may either be all painted, or all varnished, or all lime-washed, or partly one and partly another. The parts to be so treated are the ceiling and tops of rooms and all inside walls.

If you use paint or varnish, there must be at least three coats of it; and the three coats must be applied at least once in every seven years. Moreover, by way of keeping the paint clean, the baker must wash the paint or varnish once in every six months at least with hot water and soap.

The parts of the bakehouse that are lime-washed must be re-lime-washed once every six months at least. And these regulations about painting, varnishing, and lime-washing apply equally whether the inside walls, ceilings, and top of rooms are plastered or not. Suppose, that is to say, you have a one-

storey shed which you use as a bakehouse. The shed has no ceiling—only the roof itself; and the roof consists of beams with slates laid over them. The baker must lime-wash this roof every six months at least; unless, of course, he has an artistic soul, and prefers to paint or varnish it.

The second sanitary regulation to be observed in towns and villages with a population of more than 5,000 souls relates to **sleeping-rooms in proximity to bakehouses**. It is forbidden to use as a sleeping-apartment any place on the same level as a bakehouse and forming part of the same building. By "same level" I mean the same floor or storey. But as this rule is only intended to have the effect of preventing the dough in the bakehouse and the utensils used there from becoming contaminated, certain exceptions are made where it is thought that the object of the rule can be maintained. Thus, if a sleeping-room is separate from the bakehouse by a partition extending from floor to ceiling without a break, and if in addition the sleeping-apartment has a glazed window of at least nine feet superficial area, of which four and a half feet must be made to open for ventilation, there is no reason that this apartment should not be used as a sleeping-room. Note that the nine-foot glazed window must open out into the open air, and not merely into some other part of the house or building.

I want to make it quite clear, because I believe the law is very often broken in this regard, that the law is that nobody shall sleep in rooms adjoining bakehouses unless the above conditions are satisfied—I mean that nobody shall take even a casual rest there.

As far as the rules and regulations heretofore laid down apply to retail bakehouses, they are to be enforced by the local sanitary authority through its inspectors of nuisances. But so far as they refer to wholesale bakehouses and to factory bakehouses, they are to be enforced by the factory inspector or Government official.

The difference between wholesale and retail bakehouses is this: **A retail bakehouse** is a place where bread, confectionery, or biscuits are not sold wholesale but by retail in some shop or place occupied with the bakehouse. That is to say, in the very usual case of a baker with his shop in front on the street and his ovens in a room at the back of his premises, the bread, biscuits, etc., baked in the ovens being offered for sale in the shop, we have a retail bakehouse within the meaning of the Act. The only wholesale bakehouses are either bakehouses within the above definition, except that goods are sold by wholesale there, or bakehouses where the bread is baked, not occupied with, and not in connection with, the shop where the bread is sold. Thus, if I have a shop in High Street, Kensington—merely a front shop—and a house at Shepherd's Bush where I bake the bread and cakes that I sell in my shop, the bakehouse does not come within the purview of the sanitary authority at Shepherd's Bush.

There is another provision as to retail bakehouses. They must be **properly ventilated** so as not to be injurious to the health of the workers, and so as to render harmless, as far as practicable, all the gases, vapours, dust, and impurities generated in course of baking.

Book X.

THE LAW OF PROPERTY OWNERS AND BUILDERS.

CHAPTER I.

BUILDING REGULATIONS AND THE BUILDING LINE.

Where the law to be found—Local Acts of Parliament—Local bye-laws—Where obtainable—Different rules in different districts—Urban districts—Rural districts—Power to make bye-laws—Erecting buildings contrary to bye-laws—Plans to be submitted—Must be passed if according to bye-laws—A Corporation which tried to keep a neighbourhood "high-class"—Irregular plans must be rejected—Corporation bound to enforce bye-laws—Where plans wrongfully rejected—Two remedies—The better of the two—Plans to be received or rejected within a month—Approval cannot be recalled—A case from Bradford—Another from Pontypool—Local authority using bye-laws wrongfully—What a sanitary authority must do—What a sanitary authority must not do—Upon what points bye-laws may legislate—What are new buildings?—When is re-erection a new building?—Conversion into a dwelling-house—Substantiality of the alterations—SCOTLAND—The five great towns—The burghs—Places outside burghs—Permission from the Dean of Guild for new buildings—For other purposes—Plan of the site—Plan of the building—What the plans must show—What to provide for—Light and ventilation—Common stairs—Height of rooms—Size of windows—When plan to be approved or disapproved—Statutory bye-laws—Districts outside of burghs—What bye-laws may be made—More limited than in burghs—BUILDING LINE—*England*—Urban districts—How far building may be brought forward—The first house may fix the line—What buildings are adjacent?—Degree of proximity—The Bristol case—No exact rule—Each case depends on circumstances—The front main wall—A house in two streets—Additions to existing buildings—A penalty—Offence continues so long as building exists—The obstinate man from Eastbourne—Two buildings begun at same time—The law in London—Line fixed by architect of L.C.C.—*Scotland*—Houses may be set back—Or forward—Burgh authorities may compel this—Unightly projections—May be removed—If projections old, compensation to be paid—*England*—Buildings taken down to be rebuilt—Line of frontage need not be mathematical—Notice to alter line of frontage to be given before building commenced—What is "taking down" a building?—The Richmond case—Even extensive alteration not necessarily rebuilding—Local authority desiring to widen street—*Scotland*—Improvements in burghs—COMPULSORY PURCHASE OF LAND by public authorities—Course of procedure—Compensation to owner and leaseholder—Meaning of "house" or "building"—Temporary structures—The Scots law—The law in London.

THE reader must be careful to observe that the law as to buildings is not always wholly contained in the statutes to which I am drawing attention. Towns and cities very often have private Acts of Parliament, and bye-laws which vary considerably—no doubt intended to meet the peculiar necessities, or fancied necessities, of their own localities. I cannot

deal with these, but must confine myself to those Acts which apply to the whole country through. The only Acts of local application that I shall deal with are those relating to London; and these, though they are only operative in the Metropolis, are, strictly speaking, public Acts and not private Acts. I put this note in the forefront because I should be sorry if anybody were led astray by any words of mine. Let me advise you, therefore, when you contemplate building operations, whether of erection or alteration, to take the trouble to get a copy of the building bye-laws at the office of the borough surveyor or district surveyor.

At one time of day there was no law at all as to building. Anybody could build on his own land. He could build on every inch of it. He could put up any kind of building he chose. He was not restricted to any "building line." So long as he stuck to his own land, and did not obstruct the public highway, nor offend against his neighbours' rights of light, and so forth, nobody could call him to account. The public had nothing to say in the matter, at all events. But in these days, as a rule, the man who wants to erect a building, be it only a pigsty, has to do it according to rules made by the local authority.

I have already told you that in

ENGLAND (except London)

any given spot of land is within either an urban or a rural sanitary district, and is, consequently, under either an urban or a rural sanitary authority (defined on p. 1293).

Before saying what the law is, let me state that the Local Government Board may confer what are called **urban powers** in a rural district; or the L.G.B. may confer any one or more urban powers on a rural district. This may be done by the L.G.B. on its own initiative, or upon the request either of the Rural District Council or of one-tenth (in value) of the rate-payers in the rural district. Thus a Rural District Council may acquire all or any of the powers relating to buildings already conferred by law upon urban sanitary authorities (Town Councils, etc.). Therefore, when I speak hereafter of an urban district, I must be taken to include all rural districts which have had urban powers conferred on them. Rural District Councils may also adopt by resolution, and make applicable to their district, most of the provisions I shall mention. The following law applies, therefore, to rural districts which have "adopted" such powers.

Now all urban sanitary authorities (and the rural authorities mentioned in the last paragraph) have **power to make bye-laws**, which I will deal with as I go along, relating to a great variety of matters affecting new buildings or alterations to existing buildings. Perhaps the most convenient way of dealing with these matters will be to imagine the reader to be a man who wishes to build an entirely new building, on a site previously unbuilt upon, in an urban district. The first thing he must do is to **deposit his plans** with the local authority, so as to have them passed. For

every urban authority may make bye-laws requiring plans of new buildings to be deposited with them before the work is commenced. The object of this is to see that the building shall conform to the bye-laws as to height of rooms, etc.

You are *entitled to a copy of your local bye-laws free of charge* on application to the clerk to the local authority—that is, if you are a ratepayer of the district. If you are not a ratepayer, you can always get someone who is to procure a copy for you. The bye-laws must not be repugnant to the laws of England, and they have to be submitted to and approved by the Local Government Board before they can take effect. The L.G.B. will not sanction them unless notice has been given, in one or more local newspapers, at least one month before the application for confirmation is made.

Where there is a local bye-law requiring plans of new buildings to be sent to the Council (usually to the clerk or surveyor to the Council), and you do not send in plans before you start building, you run the risk of having your **building pulled down** by the local authority at your expense. The Council must pass or reject the plans *within one calendar month* from their being sent in, and must signify their determination to you in writing. If you have an answer within the month expressing disapproval, you had better see the clerk or surveyor (if there is a surveyor, see him) and ask him what the objection was. He may tell you—probably he will—the ground of rejection. Or he may take refuge in the oracular style, saying, “The Council have disapproved of your plans,” and give no reason at all.

If I were you, I would press the Council (by letter to the clerk) for a written statement of their reasons for rejection. I will tell you why. No sanitary authority can refuse to pass plans unless a bye-law has been violated. **If the plans comply with the bye-laws, the Council must pass them.** They cannot go behind their own bye-laws. They cannot take any other thing whatsoever into account. Sometimes they try to; but if they do, they act illegally, and their decision is of no validity. This applies not only to bye-laws made under the Public Health Acts, but to bye-laws made under a local Act.

An interesting example was once furnished by the Corporation of Newcastle-upon-Tyne. This ancient city has a Town Improvement Act, passed before the date of the Public Health Acts, whereby the Corporation was empowered to make building bye-laws. In such cases, the private Acts and Public Health Acts supplement one another. In September, 1887, one Veitch gave notice that he intended to build at Rye Hill, Newcastle, a tenement-house, and deposited the plans at the office of the Corporation surveyor, as the bye-laws required. The Improvements Committee considered these plans, found them strictly in accordance with the bye-laws relating to new buildings and with the statutes on the subject, but refused to approve. The ground of disapproval was that Rye Hill was a better-class residential neighbourhood—the Vicar and other eminent townsfolk lived thereabout—and that a tenement-house was unsuitable for that locality, would spoil the neighbourhood, and would depreciate the value of the neighbouring property.

Veitch took the matter to the High Court in London ; and the Corporation was plainly told that it had no power to reject plans except for non-compliance with the Acts of Parliament and the local bye-laws

It is the duty of the Council, in the words of Mr. Justice Mellor, to confine their attention to the plans, and to judge those plans by the bye-laws. This **cuts both ways**. A sanitary authority *must* pass plans that conform to the bye-laws. Equally, it *must* reject plans that do not conform. It was so decided in a case from Pontypridd in 1891, and in another case from Bedford in 1885. In the latter case it appeared from the evidence that the Corporation bye-laws required a particular thing to be done. The plaintiff, the owner of some house property, had never done this particular thing, and the Corporation had never objected before. On this occasion they did object—but not until the plaintiff had done the work. The plaintiff said : “Oh! they waived the performance of this bye-law.” Mr. Justice Cave said : “The Corporation cannot dispense with the law, which is not for their benefit, but the benefit of the public”—an observation which goes directly to the root of the matter. It is, however, open to any Corporation or District Council to make a bye-law giving themselves some discretion—some power to dispense with certain bye-laws in certain cases.

Suppose the local authority rejects your plans. It may do so either on the ground that you have not complied with a bye-law, or for some other reason. Suppose it gives as its reason that you have not complied with a bye-law, you should look at your rejected plans and at the bye-law in question ; for the local authority may be wrong. In spite of the contrary decision, you may have complied with that bye-law and every other bye-law. Or it may be your plans are rejected (as in the Newcastle case) for some reason outside the bye-law. **What are you to do if your plans are wrongfully rejected?**

You have **two remedies**. The first is to go on building ; for you are entitled to disregard an illegal proceeding on the part of the sanitary authority or anybody else. You may proceed with your work, taking care to stick very strictly to the plans rejected. If you do go on, the Council will, in all probability, send you a notice to stop and to pull down what you have already done, under threat of pulling it down themselves if you disobey the notice. You can then issue a writ and claim an injunction to stop them from interfering with you. You had better seek a trustworthy solicitor to do this for you. But I do not advise you to pursue this course. It is better policy to follow the course I shall suggest in a few minutes—the second remedy. Because if you start building when your plans have been rejected, it means that the Council will “have it out” with you. Legal proceedings are bound to follow ; and in those proceedings you will have to prove that your plans conformed to the bye-laws. You might as well do this first as last. And if you build in defiance of the prohibition, and the Council come along and pull down your building, or begin to do so, and it should turn out that they were right and you were wrong, you will have been involved in a lot of useless expense.

Wherefore, if you are going to fight the local authorities, **the cheapest and best plan** is to take legal proceedings at once to compel them to sanction your plans. Such proceedings can be taken in the High Court. You will have to prove that your plans are strictly in accordance with the bye-laws, and if you can prove it, the local authority has not a leg to stand on.

Suppose the calendar month elapses (p. 1580), and **you do not receive any notice of approval or disapproval**. Well, in this case silence seems to give consent—you can go on building. Be careful to keep to the plans you submitted. Do not deviate from them by a hair's breadth, and you are safe. One calendar month is the full time allowed. Even if the Council have made a bye-law giving themselves more than a month to consider building plans, the bye-law is not worth the paper it is written on. There must be a limit of time, because, as Lord Justice A. L. Smith once said, "A man shall not be for ever prevented from building on his own land."

There is one other point to be observed. **Once the sanitary authority has approved your plans, it cannot recall its approval**. There was once a case from Bradford (Yorks), where the Corporation had powers under a local Act very similar to those under the Public Health Acts. Under this local Act they made bye-laws, one of which was that anyone who contemplated building or rebuilding, or making certain kinds of alterations in buildings, must conform to certain regulations and submit the plans to the Corporation for approval. A Mr. Slee, being desirous of rebuilding a warehouse, sent in a plan. He got it back with a letter from the borough surveyor's office as follows:—

"I beg to inform you that your plans, sections, and particulars of a "currier's warehouse and office, proposed to be erected in Chapel Lane, "have been laid before the committee of the Council, and that the said "committee have approved of the same."

Slee promptly pulled down his old warehouse and offices. But hardly had he levelled the last wall with the ground than the Corporation took it into their heads to widen the street. They therefore gave notice to Slee that they were going to set back his new warehouse no less than twelve feet and some inches—paying him for it, of course. Slee observed that if they cut a twelve-foot slice off his place, the place would not be of the slightest good to him for his business. He said, "I'll sell you the lot, if you like." But the Corporation would not buy. Then the currier put his foot down. The Corporation had approved of his building plans, he said. If they had not, he would never have pulled the old place down. And, as they had approved, he was going to build. There was a great Chancery action about it; but ultimately Slee won; for he got an injunction to restrain the Corporation from interfering with him building the new warehouse according to the original plans.

It is **not an uncommon trick** for local sanitary authorities to try to use the building bye-laws to enforce some line of policy which they have persuaded themselves to be good for the town, or in order to get the whip

hand over a property owner. Thus one Masters, owner of the Greyhound Inn at Pontypool, sent in a not very first-rate plan, showing a new line of frontage slightly put back. The local authority approved the plan, and decided to offer Masters £40 for the piece of land he was throwing into the street. Masters was informed he might go on. Accordingly he pulled down his front wall and commenced operations—putting in his foundations for the new front wall. He refused, however, to take £40 for the small piece of land that was being put to widen the street. After the old wall was pulled down, and new foundations in, the local authority met again. It was reported that Masters had refused their offer of £40. Wherefore, by way of reducing him to submission, and making him feel the power and authority of the Pontypool Local Board, the Board resolved “That Mr. Masters not having accepted the £40 offered by the Board as compensation for the land given up for street improvements, the **terms are now abandoned**; and that the line of frontage will now be from Mr. Masters’ main building to the main building of the George Inn”—that is, the frontage was to be considerably set back.

The innkeeper continued to build on the line of frontage mentioned in his plan, and ran up the wall several feet. Then the Board arose in their might; sent some workmen to the spot, and began pulling the wall down. Mr. Masters very promptly fired into them a writ claiming an injunction, and on the facts above stated he won.

His case was, in substance, this: “The old Greyhound could have stood for a long time where it was. I was not bound to pull it down. Before I pulled the front wall down I obtained the approval of the Board to a certain line of frontage. If they had not agreed to that line, I should have left the old inn standing. On the faith of their approval I pulled my wall down. They cannot change their minds now. If they had at first said to me, ‘We shall put you back ever so many feet,’ I should not have rebuilt at all. It would be a fraud to let them delude me into pulling my front wall down on one set of conditions, and then force down my throat another set of conditions.” The Chancery Court held that Mr. Masters had the right of it.

And the sum and moral of it is, that **a sanitary authority must**

- (a) Approve or disapprove the plans submitted;
- (b) Signify their approval or disapproval within the time named by the bye-laws (not over one month);
- (c) Take nothing into account except the bye-laws and the Public Health and local Acts;
- (d) Stick to their approval, once they have given it;

A sanitary authority must not

- (a) Keep the plans lying about beyond a month;
- (b) Forego the observance of any of the bye-laws;
- (c) Worry itself about the good of the place—except as set out in the bye-laws;
- (d) Revoke an approval once given;
- (e) Withhold an approval in order to put pressure on the builder for some collateral object.

What are the bye-laws you must observe as to buildings when you send in your plan? Well, first of all, the Council can make bye-laws as to

- (a) "The structure of walls, foundations, roofs, and chimneys of new buildings for securing stability and the prevention of fire, and for the purposes of health ;
- (b) "The sufficiency of the space about buildings to secure a free circulation of air and with respect to the ventilation of buildings ;
- (c) "The drainage of buildings : water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings ;
- (d) "The prohibition of the use of buildings for human habitation ;
- (e) "The structure of floors, hearths, and staircases ;
- (f) "The height of rooms intended to be used for human habitation ;
- (g) "The paving of yards and open spaces to be used for dwelling houses."

There are other matters as to keeping to the building line, which will be dealt with later ; also matters which apply when a builder is laying out a new street.

All the above matters from (a) to (g) may be dealt with by the bye-laws of a rural sanitary authority, if it has acquired urban powers ; or has, by resolution, adopted section 23 of the Public Health Acts Amendment Act, 1890—which, by the way, most Rural District Councils that embrace villages and townships of any size have done or very soon will do. From (e) to (g) inclusive, bye-laws can only be made when

- (1) The authority (urban or rural) has "adopted" Part III. of the Public Health Act, 1890 ;
- or (2) The authority has power by some local Act to make such bye-laws.

The bye-laws on (b) (c) (d) (e) (f) (g) above-mentioned are applicable only to new buildings. **What are new buildings?** The question does not seem very imposing until you have tried to answer it. Because, first of all, you have to ask, *What is a building?* and answer it. If anybody could supply an exhaustive and workable definition of the word "building," as used in the Public Health Acts, he would be conferring a benefit on the whole legal profession—not to mention his Majesty's judges.

Let me clear the word "**new**" out of the way first, before I start on the task of telling you, to the best of my ability, what a building is. For you can, by the Acts, so alter an old building as to make it a new one, and you can do it by

- (a) Re-erecting any building pulled down to or below the ground-floor ;
- (b) Re-erecting any frame-building of which only the framework is left down to the ground-floor ;
- (c) Converting into a dwelling-house a building not originally constructed for human habitation ;
- (d) Converting one dwelling-house into more than one.

These are definite and statutory ways of turning an old or existing building into a new one; but besides these there are scores of ways in which a building may be made new. Lord Coleridge once said, "If a building were nearly all taken away and then rebuilt, it clearly would be a new building. On the other hand, it is quite clear that, by a small addition of, say, a door, the building would not thereby become a new building. But between these two extremes there may be thousands of cases; and it would be impossible in each particular case to give a definition of what is, or is not, a new building. . . . It is a question of degree," said the learned judge.

In that particular case a man in Swansea had a public-house, *The Old Swan*, which was a rambling sort of place with a garden and outhouses. The proprietor, wishing to give himself more accommodation, took down part of the old garden wall, rebuilt it, ran up over it a suite of rooms, between which and *The Old Swan* was internal communication; also he raised an old lean-to and built a room above it. The premises that had been stables were taken down (they used to lean against the old garden wall) and rebuilt. In the circumstances, the Swansea Borough Surveyor said the building was a new one. Mr. James, the proprietor of *The Old Swan*, took a different view. He contended that the work was merely an alteration, and that, therefore, he need not send in any plans to the borough surveyor, or obtain the sanction of the Town Council to his work.

Accordingly, James proceeded merrily, and, when he had finished, was surprised to find a summons awaiting him for breach of the borough bye-laws. The stipendiary magistrate who heard the summons took the very proper course of going to look at the building. He found, as he said, that "the structure is a comfortable, good-looking dwelling-house, which previously it was not." He accordingly convicted and fined Mr. James, who promptly appealed; but the High Court took the same view as the magistrate.

IN SCOTLAND

the substance of the law does not vary very much from the law in England. The main difference is that in England a great deal is left to the bye-laws of the individual districts. In Scotland, on the other hand, there is imposed by the Burgh Police Act in all burghs a statutory set of building regulations. These regulations can be altered by the local authority; but the consent of the sheriff must first be obtained.

Note, also, that to **five of the largest towns** in Scotland the Burgh Police Act (1892), which I am about to bring up for inspection, does not apply. Each of these towns, Edinburgh, Glasgow, Greenock, Aberdeen, and Dundee, has its own private Police Act. From the point of view of the author of this work, that is a great pity; because it would have been better to be able to give the whole of the Scots law on this subject. Dwellers in the five great towns mentioned must look into their own Police Acts—which are, by the way, much the same as the General Act, perhaps a thought stricter, if anything.

In districts that do not come within the area of any burgh, the law is not

the same. Such districts are under the District Committee, if there is one, and if not, under the County Council—called in each case the local authority. The local authority is in much the same position as an English authority—that is, it can make building bye-laws. Having thus made it clear that Scotland, for the purposes of what I am now writing upon, is divided into three parts,

- (1) The five great towns: Edinburgh, Glasgow, Greenock, Aberdeen, and Dundee;
- (2) The burghs—including royal burghs, police burghs, and all other sorts of burghs;
- (3) Places outside the five towns, and outside the burghs.

let me go on to deal with No. 2 of these, and try to make plain what is

The Law of Scottish Burghs as to Building.—In the first place, there is a special Court in many Scottish burghs to deal with building questions, called the Dean of Guild Court. Where such a Court exists it takes charge of the administration of the building-laws. Where no such Court exists, then the Town Council, or burgh Police Commissioners, or other municipal body whose duty it is to administer the Police Acts, takes charge.

In the first place, if you propose

- (a) To erect a new building;
- or (b) To alter the structure of and use for human habitation a building not so used before;
- or (c) To alter the mode of occupancy of any existing house in such a manner as to increase the number of houses or occupants,

you must first get leave from the Dean of Guild or other authority.

In order to get leave you must deposit a petition setting out a description of the proposed building or alteration. You must, with the petition, **send plans of the site and the building.** The site plan must show (1) the properties next door on either side; (2) the position and width of any street, court, or footpath from which there is access to the property, or on which it abuts.

The other plan, with which must be sent sections and elevations, and detailed drawings if necessary, must show in full detail the following particulars about the building:—

- (1) Height of the intended house, building, or alteration.
- (2) Structure and arrangement of the intended house, building, or alteration.
- (3) Levels as to street, court, etc.
- (4) Levels as to sewer or drain with which the soil pipes and drains are to be connected.
- (5) Lines of intended drainage.
- (6) If it is to be a building of public resort—*e.g.* a temperance-hall—arrangements for ventilation, and ingress and egress of the public.

All plans must be drawn to scale:—

1½ inches to every 10 feet for buildings under 100 feet long;

1 inch " " " over 100 " and under 300 feet long;

¾ inch " " " " 300 feet long.

These plans and the petition are to be deposited with the surveyor or clerk to the Dean of Guild Court, or other local authority, who must take them into consideration at their first meeting. If the Dean of Guild Court, etc., is satisfied with the plans, a warrant is granted to proceed with the building; but if not satisfied that the plans are in order as to stability, light, ventilation, or other sanitary matters as set out hereafter, the warrant may be refused. When you make out your plans, you must see that you provide for sundry things:—

- (1) That a building to be built or altered for a dwelling-house has every room *lighted and ventilated from an open space*. The open space may be a street. If it is not a street, it must be at least as big as three-quarters of the area of the ground space of the house—*e.g.* a house built on the usual plan (a “flat,” we should call it in England), with the front rooms facing the street. The back rooms, unless they also face a street, must look on an open space. If the house occupies 100 square feet of ground, the space must be at least 75 square feet; and it must be vacant, except for such w.c.’s, ash-pits, coal-houses, and conveniences as the local authorities (Dean of Guild, etc.) allow to be placed there.
- (2) *A tenement house*, with a common stair or passage inside, can only have entrances to twelve dwelling-houses from that stair or passage. But if the stair is an outside one, with balconies, there may be entrances to twenty-four dwelling-houses.
- (3) *Common stairs, balconies, and passages* of tenement houses must be at least four feet wide, finished size.
- (4) *The height of rooms* of new dwelling-houses to be 9 feet 6 inches (at least) on the ground floor; 9 feet other floors up to attic floor; attics 8 feet through one-third of the room, and nowhere less than 3 feet. These heights apply only to rooms intended for habitation; and the height is to be measured from the inside, from floor to ceiling. All this applies to any old building hitherto not used as a dwelling-house, but altered to be so used.
- (5) There must be *plenty of windows*—a very wholesome provision; one, at least, for every habitable room. The total window-space, leaving out sash and frame, to be at least one-tenth of the area of the room. The top of at least one window per room to be not less than 7 feet 6 inches above the floor. All sash windows to open the full width of the upper half; basement windows to open half at least.
- (6) *Ventilation* must be provided in every habitable room of less than 100 square feet area, unless there is a fireplace. There must also be proper ventilation by windows, skylights, or other means of common stairs and passages.

So much for the planning of a dwelling-house, whether new or altered into a dwelling-house. There are others which apply, some to all buildings and some to particular classes of buildings.

- (7) Public buildings, theatres, and places of public entertainment must have means of lighting ; also emergency exits and entrances.
- (8) You may not fix into any new building (*i.e.* built after 1892) a pipe for conveying smoke or heated air, without the authority's consent.
- (9) You may not fix a pipe or funnel for conveying smoke next to a street, nor in the inside of the building, unless it is 9 inches (at least) distant from wood or other combustible material.
- (10) You may not place a funnel of brick or stone (or both) outside a building on the side next to a street, so as to project beyond the general line of buildings in the street.
- (11) Before beginning to alter or erect a church, chapel, or place of public entertainment, a building for holding large numbers of people for any purpose whatsoever (this would apply to a school, an athenæum, or such-like building), you must give to the authority notice (30 days) in writing. With the notice you must send a plan and description of the proposed construction of the building with respect to supplying fresh air and removing vitiated air.

This plan must be approved or disapproved at the first meeting of the authority after its receipt. Notice of approval or disapproval to be sent (in writing) within seven days of the first meeting. If not, the building may be erected, and can be considered passed as to ventilation ; but all other regulations must be fulfilled. If the builders build without giving due notice, or after disapproval, or deviate from an approved plan, the Dean of Guild Court (or other local authority) may alter the building and charge the expense to the owner.

The following are the STATUTORY BYE-LAWS in burghs :—

1. The site of the intended building shall be dug out to such depth as shall be necessary, in the opinion of the Commissioners, for the removal therefrom of soil or refuse ; and it shall not be lawful for any person to build upon any site until such soil or refuse is so removed.
2. The walls of every new building to be used as a dwelling-house shall have a damp course of durable material, impervious to moisture ; the damp course for external walls to be at the level of the ground directly abutting upon the external wall, or at such other level as the Commissioners shall order. Party walls to have the damp course at a level of not less than the under side of the joisting of the lowest floor ; and where, in the judgment of the Commissioners, the nature of the soil or subsoil requires it, the whole internal area of the site shall be covered with a layer of asphalt, cement, concrete, or suitable material to their satisfaction.
3. The outer walls and the party walls, or separate side or end walls, and the joisting and the principal timber and ironworks, shall be of sufficient strength and stability.
4. There shall be to the satisfaction of the Commissioners sufficient ashpit, water-closet, or privy accommodation in connection with the building.
5. The plan of the building shall not contemplate the raising or lowering of any article from windows or openings towards any public streets by hoists or other appliances outside the building line.
6. All party walls and gables shall be solid, except at vents, fireplaces, presses, and where the Commissioners may allow them to be built otherwise.
7. All external walls, party walls, passage walls, partition walls dividing separate houses,

staircases, stairs, and landings shall be constructed with incombustible materials, and all party walls shall be carried through above the roof to form a parapet. The parapet to be finished on top with a cope, and the height of parapet to be not less than 12 inches, measured at right angles with the slope of the roof, above the covering of the roof of the highest building to which such party wall belongs.

8. All walls of dwelling-houses shall be so constructed as to prevent damp.

9. The mortar to be used in the construction of new or altered buildings shall be composed of fresh burnt lime and clean, sharp pit sand, grit, or ground bricks, or freestone shivers, without earthy matter, and no sea or ballast sand shall be used.

10. The joists under every hearth shall be bridled, and, where practicable, the hearth shall be supported by a brick arch or concrete under its whole area, or to be otherwise constructed or supported as the Commissioners may direct. Every fireplace shall have jambs and lintels, or arches, of incombustible material projecting at least to the flush of the plaster work. No timber, joist-beam, or safety lintel shall be inserted into a wall nearer to the fireplace or vents, where practicable, than 12 inches.

11. Every building shall have rhones, gutters, or spouts along the eaves thereof, with down-spouts and perforated gratings to carry all water falling on the roof thereon to the drains.

12. No part of a built chimney or flue must be less than 9 in. \times 9 in., and no part of a wall on the outside or house side of the chimney to be of less thickness than 9 inches. Every chimney-head shall have a stone cope, into which chimney-cans can with safety be inserted, and such chimney-cans shall be sufficiently guarded.

13. The floors between each flat of a tenement shall be deafened.

14. All apartments in every dwelling-house shall be plastered with three coats of plaster.

15. All plumber work connected with sanitary arrangements and house drains shall be ventilated, trapped, and otherwise constructed and tested to the satisfaction of the Commissioners.

16. In ground floors where the space from surface has to be filled up to level of floors, the same shall be filled up, subject always to sufficient space being left for ventilation, with dry stone shivers or such other materials as the Commissioners may appoint.

17. All private courts, common passages, and common areas (other than bleaching greens) shall be paved with natural or artificial stone, or such other materials as the Commissioners shall approve, and be provided with proper and sufficient means for taking off the surface water.

18. No external covering of any roof shall be constructed of combustible materials; and it shall not be lawful for the owner of any building having, at the date when this Act comes into operation, a roof covered with thatch or other combustible material, and contiguous to or adjoining to any other building, to suffer such covering to such roof to remain for a longer period than seven years thereafter, unless with the consent in writing of the Commissioners. And every person who shall suffer the covering of any roof to continue, contrary to the provisions herein contained, and who shall not remove or alter the same within one month after notice given to him for that purpose by the Commissioners, shall be liable to a penalty not exceeding £1 for every day that such building or covering to such roof shall so continue.

Any person failing to comply with any of these conditions in a good and sufficient manner shall be guilty of an offence, and be liable for each offence to a penalty not exceeding £5.

IN DISTRICTS OTHER THAN BURGHS, the Scottish local authorities have powers similar to, but not quite so extensive as, the English urban authorities. The burghs, as I have shown, have a set of ready-made building rules similar to the bye-laws of English towns. The outlying county districts have to rely on bye-laws made locally. The making of these bye-laws is in the hands of the local authority (*see* p. 1293), but subject to the approval

of the County Council. Bye-laws must always be published before they can come into force.

The bye-laws can be made upon the following subjects :—

I. The deposit of plans for

- (a) New houses or buildings ;
- (b) Rebuilding houses or buildings
- (c) The conversion of non-residential buildings into dwelling-houses.

II. Building regulations embracing

- (a) Drainage of subsoil and prevention of dampness, where building to be used for human habitation ;
- (b) Structure of walls, foundations, roofs, and chimneys of *new* buildings, so far as likely to affect human health ;
- (c) Ventilation of buildings intended for human habitation ;
- (d) Sufficiency of space about buildings to secure free circulation of air ;
- (e) Drainage construction and arrangement : Soil-pipes, waste-pipes ; construction and position of earth- and water-closets, privies, ash-pits, cess-pools, dungsteads, slop-sinks, rainwater-pipes, and rhones ;

III. The intimation previous to commencement by the property owner or person laying out the work (*e.g.* builder or architect) of the date of commencing the work ; inspection to see that drains all right, and plans and bye-laws adhered to ;

IV. Pulling-down, alteration, or amendment of work done in contravention of the bye-laws.

Seeing that all such bye-laws must be made with due regard to the special requirements of the locality, it is obvious that they will vary a great deal. Penalties not exceeding £5 may be affixed for breach of a bye-law ; or, if it is a continuing offence, 40s. per day for every day the offence continues.

One offence is common to *all Scotland* ; and that is, erecting a new building on ground that has been filled up with fæcal, animal, or vegetable matter, or ground on which such matter has been deposited—unless and until the putrid mass has been removed or has become innocuous.

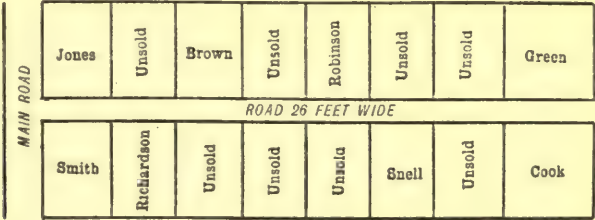
LINE OF FRONTAGE, OR BUILDING LINE.

There are in England no fewer than three laws on this important point—one for the City of London, one for the rest of London, and one for all England outside the Metropolitan boundaries. The last is diversified by an infinite number of local Acts, called, as a rule, Town Improvement Acts. When I say this, I mean that I cannot say to you, without seeing your local Acts and your local bye-laws, what the width of a street must be, nor how far back you must build from the middle of the road. But I can tell you one or two general principles that will guide you. And first, for

those of my readers who live outside the City and the London County Council area.

First, as to *urban districts* (including rural districts with urban powers). In such a district, quite apart from bye-laws, it is **not lawful to bring forward a building in a street beyond the adjacent buildings**, unless you can get the written consent of the local authority. The law is now, since 1890, very wide. To begin with, "bringing forward" applies to either adding to an existing structure or raising a new one. A "street" means not only a street in the ordinary sense of the term; it includes a highway (not being a turnpike road), a public bridge (not being a county bridge), a road, lane, footway, square, court, alley, and passage. It makes no difference whether the "street" is public or private: whether it is a thoroughfare or a *cul-de-sac*. In fact, the object, or one of the objects, of the Act with which I am dealing, is to give the urban authority control over the line of buildings in new streets from the commencement.

In the actual working of the Act, however, the authority can do nothing to regulate the building line in a street until at least one house or building has been built, unless, of course, there is a local Act enabling it to do so. The authority can regulate, by its bye-laws, the width of new streets (*see* p. 1579). But suppose a street, whether new or old, has been laid out. The local bye-laws give twenty-six feet as the minimum width of streets. Very well, you lay out your street twenty-six feet wide, and then sell the land on both sides in plots. If you are wise you will make every purchaser agree to keep to a certain line of frontage—that is, if you wish to keep up the value of property in that street. But suppose you do not. Plots on one side are bought by Jones, Brown, Robinson, and Green; plots on the other side are bought by Smith, Richardson, Snell, and Cook. Let me draw a little plan to illustrate my points:



You will see, by comparing them with the width of the road, that all the plots are fairly deep—four times as deep as the road is wide. So that, if houses are going to be built, the owners of the plots might well leave a space of at least twelve feet between their front walls and the road—that is, have a row of nice, neat front gardens, twelve feet in depth, separating the houses from the roadway. Whether this will befall depends almost entirely on the first man who starts building—or, rather, who succeeds in building a house or building first on each side of the roadway. For the

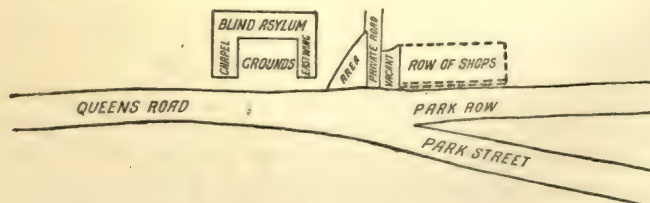
man who is first up sets the fashion for the houses near him on his side of the way. Be careful—I say, “the houses *near* him.” For it is not lawful (without the written consent of the authority)

“to erect or bring forward any house or building in any street, or any part of such house or building, beyond the front main wall of the house or building on either side thereof in the same street.”

I want you to notice that “**either side**” means **one side or the other**. You see what I mean. If you look at the plan, you will see that Jones’s plot, being at the corner, can only have one neighbour in the new street. Yet if Brown has built a house on his plot, Jones must not push his house, or any part of it, beyond the front main wall of Brown’s house. I mention this because people sometimes think that “either side thereof” means that there must be buildings on both sides, or else the Act does not apply. They are wrong entirely.

The great contest that arises under this section is, however, as to when one building is at the “side” of another. Strictly, I suppose, if you have a street a mile long with only one house in it, and that at the end, any other house built on that side might be said to be at the side of the first one. That, however, is not the interpretation put upon the section by the Courts. In their view “**house on either side**” means “**a house within some degree of proximity**.” Thus, in the extreme illustration at the beginning of this paragraph, if house number two were 400 yards away from the first house built, it would not be at the side of it within the meaning of the Act. It might be at 100 yards, according to the circumstances of the case. At 10 yards it would certainly be at the side of it. The decisions in the various cases would appear conflicting to the average man, if he were not told of the principle underlying them all—which is one and the same principle, varying only in its application to particular cases. For in one case you find 30 yards upheld; in another 23½ yards condemned. It was not a question of a few yards really: it was a question as to the principle of the thing. It becomes, then, a question as to **what is the principle** of the thing—what are the rules that ought to guide one?

It is a very difficult point, and I shall not be able to tell you exactly, because every case must be looked at on its own facts. Thus in one case, a man erected a row of shops in Park Row, Bristol, at the junction of Park Street and Queen’s Road. Park Row is a continuation of Queen’s Road—the roads running like this:



NOTE.—The plot marked with dotted lines represents the defendant's row of shops.

NOTICE OF CLAIM FOR COMPENSATION.

To the Mayor, Aldermen, & Burgesses of Kidneypool.

Take Notice that in accordance with the Notice to treat served on me on the 10th day of April 1902 I claim compensation in respect of the lands tenements and hereditaments comprised in the said Notice. Particulars of my interest in the said premises and of my claim for compensation are as follows.

Name	Number or plan referred to in Notice to treat	Description of lands and premises	Nature of tenure and interest	Occupier	Claim for compensation
William Jackson of 12 & 13 Bridge St- Kidneypool Grocer	Number 12	Grocers shop with house and three rooms attached being Nos 12 & 13 Bridge Street Kidneypool in the County of Lancaster	Leasehold held from Alfred Brooks for 21 years from Ladyday 1896 at a rent of £80. Tenant paying usual tenants rates and taxes	Myself	I claim as the value of my leasehold interest £400 I further claim £3000 for trade loss and other injury, being £700 value of trade fixtures, £200 loss on stock on compulsory sale, and £2000 loss of goodwill

(Signature) William Jackson

My Solicitors are Messrs Sells & Macks, 14 Parchment Alley, Kidneypool
My Surveyor is Mr. R. W. 3 Grange Chambers Black Row Kidneypool

Dated the 17th day of April 1902

You see from the plan that the nearest building to the row of shops was the Blind Asylum, a large building standing in its own grounds. The asylum had a chapel and an east wing projecting from its west and east side respectively to within about 24 feet of the road (Queen's Road), but the main body of the building stood back from the road 100 feet or so. Next to the area (belonging to the asylum) was a narrow private road, then a piece of vacant ground about 15 feet wide, and next the ground where the row of shops was to be built. Altogether, the distance between the end wall of the shops and the end wall of the asylum's east wing was 57 feet; but, you observe, it was made up of several distinct pieces of land—the vacant ground, the private road, the area, and the grounds of the asylum. Edwards, the man proposing to build the shops, started to build them much nearer to Park Row than the asylum was to Queen's Road—viz. 11 ft. 8 in. at one end and 14 ft. 2 in. at the other. The Bristol Corporation tried to stop him. They said he must not build nearer to the front than the wall of the east wing of the asylum—the asylum being a building on one side of him.

But Mr. Justice Romer held otherwise. He would not allow that the east wing wall was "the main front wall" of the asylum. Clearly the "main front wall" was that which stood back 100 feet from the road. And, the learned judge said, if you say that Edwards is to go back that distance, you make his land of no value to him. The decision turned on the question whether the asylum was "in the same street" as the shops. His lordship held that it was not—not because one was in Queen's Road and the other in Park Row; because if two roads are a continuation, the one of the other, they are "the same street," though they may be called by different names. The reason was a curious one. Where you have, as you had here, a building standing back a very long way from the street—a house standing in its own extensive grounds—that building is not "in the street" for the purposes of the Act. Holland House, Kensington, was taken as an example. Most Londoners know that Holland House is in Kensington High Street, and that the House itself stands back a very long way from the street. The learned judge said it would be absurd to take a house like that and allow it to mark the line of building for Kensington High Street. And the same with this Blind Asylum. It would be absurd to make all who built in Park Row at the west end build 100 feet back from the street, to the level of the main wall of the asylum.

Let it not be imagined that in every case 57 feet is too great a distance. In a case from Clacton, one Warren was going to build at the corner of two roads that shall be called Alpha Road and Beta Road. The front of the house was in Alpha Road. In Beta Road, some little way from the corner, stood a row of eight cottages, which stood 8 feet back from the road. Now Mr. Warren built his corner house so that the wall in Beta Road was flush with the street—that is, 8 feet in advance of the cottages. From the nearest point of Warren's new back premises to the nearest point of the nearest cottage was 64 feet. The local authority summoned Warren for bringing forward his

wall in front of the houses on one side of him—that is, the cottages. This is how the case stood :



The Essex justices convicted Mr. Warren, holding as a matter of fact that the cottages were near enough to the new house to be “at the side” of it. When Mr. Warren appealed, the judges of the High Court refused to disturb the finding of the justices. So, you see, 64 feet may be sufficiently near—57 feet may be too far. It all depends on the circumstances.

You must not, you see from the section bring forward or erect any house, etc., in front of **the front main wall of the house or building** on either side thereof in the same street. To find out what is the “front main wall,” you must not take a particular wing or projection, and draw your line from it; you must look at the building as a whole. The word “front” has caused a little trouble sometimes—taken in conjunction with the words “same street.” The trouble arises over the corner buildings. Thus, suppose you have a house at the corner of Piccadilly and Bond Street, the entrance of which is in Piccadilly. The wall that is in Bond Street is a flank wall, as a builder would say—it has no window and no door in it. In what street is that house? Well, it is in both streets, according to the Public Health (Streets) Act, 1888. If the owner wants to make any alterations, he would be obliged to confine his building line in Piccadilly to the line of the houses on either side in that street. Nor would he be able to push out his flank wall in Bond Street beyond the line of the house in Bond Street that stood next to him.

It is, perhaps, hardly necessary for me to say that the new house or building need only have regard to the adjoining houses or buildings on **the same side of the street**. That is necessarily understood from the words “on either side thereof.” It has been contended that it applies when the houses are on opposite sides of the street. Thus, to refer to the plan on p. 1591 once more, if Brown, on the north side of the street, and Robinson, on the same side, built houses 15 feet from the roadway, Richardson and Snell would have to build 15 feet back on the south side. It is sufficient to say that such is not the law. One is only bound to observe the building line on his own side of the street.

Now you must notice that the section applies not only to the erection of new buildings, it **applies also to additions to existing buildings**. Thus, if your house, having flat windows, is built right up to the level of the main front walls of the houses next-door to you, you offend against the law

by throwing out bow windows that project beyond those main front walls. Still more if you put up a lean-to conservatory, or anything of that kind. And still more do you offend if you pull down your front wall and shift it forward.

Suppose you have violated the law here laid down, and have built a house or building, or an addition to a house or building, projecting over the proper line. What are you liable to? **What is the penalty?** To begin with, the local authority cannot pull your building or addition down as it can in some cases I have mentioned. It may be able to get an order from the Court for demolition if you have obstructed the highway, for an obstruction of the highway is a nuisance; but under no other circumstances. What happens is this: Some fine day you get a notice (written or printed, or part one and part the other) from the local authority, informing you of your offence. The notice generally specifies a time within which you must remedy the breach of the law. You had better set-to and remedy it—which means demolishing your work; as much of it as oversteps the line. Otherwise you will be liable to a **penalty not exceeding £2 a day** for every day the offence continues after the notice. And the offence consists not merely in the wrongful building, but in keeping it there. So that the longer the projecting wall or window, or whatever it is, remains standing over the building line, the more you will have to pay. Make sure, first, whether you are right or wrong—whether your building or addition does project beyond the line of the main front wall of the house or building on either side; and if it does, submit with what grace you can. And waste no time.

If you or your architect should feel quite sure you are in the right, write and say so. You will have to wait for the local authority to take proceedings to summon you for the penalties, and then make your defence. You cannot take the bull by the horns and start on the local authority first, as you can in cases where it threatens to demolish the work (*see* pp. 1580-1).

Mark one thing well. It will not help you in the slightest to prove that your addition or building was finished before you got the notice; that does not matter. What is more, you can be **summoned over and over again.**

You have another very curious question arising **when two people begin to build side by side at the same time.** Thus, let us suppose, in the case of the building plots of which the plan is given on p. 1591, that Smith and Richardson, who have bought adjoining plots, both start building at once. Smith's idea is to use his plot—being a corner one—for a shop; and he desires, therefore, to build flush with the road. Richardson, on the other hand, wishes to run up a pretty villa residence. His notion is to build 15 feet back from the road, so as to ensure privacy and enhance the appearance of his house. Naturally, Richardson will not be pleased if Smith is allowed to build flush with the pavement. Being a smart man, Richardson hurries his architect and his builder, sends in his plans to the District Council, gets them passed a week before Smith can get his passed, and sets his builder to work. He succeeds in digging his foundations, laying them, and getting his front wall up to the height of about six inches above the ground before

Smith can lay a single brick. When the shop-builder does start, however, it soon becomes obvious to his neighbour that the foundations are being laid flush with the road—that is, 15 feet in front of the line that Richardson has laid down for himself.

Can he stop Smith? Can he say, in law, "My six inches of wall constitute a 'building'; and as the front main wall is fifteen feet back from the road, you, being at one side of me, must build your wall 15 feet back from the road also"? I think not. I should say that the bit of wall hastily erected by Richardson is not "the front main wall of a house or building," because there is no "house or building" at present in existence. "Building" is, unfortunately, not defined in the Acts; but I can hardly think it includes an unfinished wall without a roof. Richardson's six inches of wall are really the proposed front main wall of a proposed house or building.

IN LONDON, the law as to building frontage, or street line, is somewhat different from that of the rest of England. The property owner must keep his new "building or structure" back to **the general line of buildings** in the street, part of a street, place, or row of houses in which it is situated. There is, however, a slight variation in the case of streets, etc., where the houses stand a long way back from the highway. When the "general line of buildings" consists of buildings 50 feet or more back from the highway (as is the case in some of the best streets in the suburbs), you may set your new building up to within 50 feet of the highway—or may alter a house standing further back so as to bring it up to the 50-foot line. But once the "general line of buildings" has crept up to less than 50 feet of the highway, no one can move over the line, except with **permission in writing of the L.C.C.**

No question can very well arise as to what is "the general line of buildings," because power is put into the hands of the L.C.C.'s superintending architect to declare what the line is. This gentleman not only may, but *must* fix the line if required to do so, either by the property owner or by the L.C.C. He does it by issuing a certificate; and this certificate must be issued within one month from the time it is applied for. Nobody, therefore, need ever overstep the line; because all he need do is to write to the superintending architect of the L.C.C. at the Council offices, and ask for a line to be fixed in case of doubt.

A man who pushes a building forward runs a grave risk of having to pull it down again unless he has previously ascertained what the building line is, or has obtained permission in writing from the L.C.C. to build forward. Nor is it for him to say that he had part of a building already up. For example, a man owned a piece of building-land in Fulham, on which he laid out a new street—this was in 1890. At one end thereof he commenced to build a house; but all he did was to put in the footings of the walls and build 12 feet above the ground on the side nearest to the street. In 1892 he built a row of cottages further down the street, some 10 feet further back than the wall of the unfinished house. In 1893 he resumed work in the end house. But the County Council intervened. Their superintending architect had a look at the place, and certified that the "general line of buildings in the

street was the front of the row of cottages." In the end the builder had to set back the end house 10 feet. The work that had been done when the house was abandoned in 1890 did not amount to a "building," and the site must be treated as practically a vacant site. It should, however, be noted that, subject to what I shall say in the next paragraph, the L.C.C. cannot interfere with you if you build on a site which has within seven years previously been occupied by a building or structure—lawfully occupied, of course. I shall call such sites "old sites."

When you are **rebuilding on an old site** (*see last paragraph*), you can, in certain cases, be made to set back your "building or structure" to the general line of buildings. "Certain cases," I said; and I meant thereby when to the extent of half its cubical extent (*a*) the building has been taken down; (*b*) has been destroyed by fire or other casualty; (*c*) has been demolished, pulled down, or removed from any other cause (*e.g.* demolished as a public nuisance, insanitary, etc.). In such cases, I say, if any part of your old building projected beyond the general line of buildings, or beyond the front of the building, wall, or rail on either side thereof, the Council can compel you to shift back your site to the line they require. They have to **compensate** you for the ground given up in the manner set out at length later on. But if the compensation claimed by you does not exceed £50, you can take out a summons at the court of the nearest London police magistrate. Note that this paragraph has no application to the City.

Now suppose you, being the owner of the property affected, think the line fixed by the superintending architect is wrong, **can you appeal?** Yes, you can. But you must not disregard the line fixed, and go on building regardless of it; because you will not be heard before the magistrates to say that the line is wrong. Your proper course is to appeal, as soon as the architect's certificate is issued, to the special tribunal of appeal constituted to deal with such matters. You can get the address from the L.C.C. office. In order to give you an opportunity of appealing, the architect's certificate must be sent to you within fourteen days after it is issued, and also to the owners of the houses in the same block or row for 50 yards on either side of you. If there are no houses answering to that description, then the owners of the vacant land on either side must be served with the certificate.

The County Council may consent to any building being put forward over the general line of buildings in the street—so that, if you have good reason, you should ask for such leave. They may make it a condition of their consent that you shall dedicate to the public land in front of the house or building in question. They may also make it a condition that the house or building or erection shall only be used for certain purposes; and if you afterwards try to disregard the conditions you will find yourself, in all probability, stopped by injunction.

THE STREET LINE (SCOTLAND)

The Burgh Police Act, 1892, gives to the local authority (*i.e.* Town Council or Commissioners) very considerable powers with regard to the regularising of

the buildings in a street. Suppose, for example, you are the owner of a **house or other building that is set back** in the street. You may, if you like, apply to the authority to be allowed to set it forward, so as to come into line with the neighbouring buildings. The authority can refuse, if it pleases, or it can grant leave on some terms. Naturally, if you are going to be allowed to take a few inches, or a foot or two, of the street and add them to your premises, you must expect to pay for the privilege.

There is another case in which the initiative lies with the authority, and that is when you have begun to alter the building extensively—so extensively that you have taken part of it down. Still more does this apply when you have pulled the whole lot down and are going to rebuild. The authority may give you **notice to bring your wall forward, or set it back**, or alter the angle so as to bring your premises in line with the rest of the street. The authority fixes the line. Here, however, if you sustain any loss or damage by being obliged to comply with the request of the authority, you can claim and obtain compensation. Such **compensation** is arrived at in the manner set out on p. 1601.

In yet another way may the local authority improve the appearance of the town. A street is not seldom spoilt by an **unsightly projection**—sometimes of a more or less dangerous character. The authority of the burgh may require it to be removed or altered. If the projection is a new one—that is, was placed there after the Police Act (1892) became applicable to the burgh—the authority may summon the owner of the building and have him fined 40s. The jurisdiction extends to “any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign-post, sign-iron, show-board, window-shutter, wall, gate or fence, or any other projection erected or placed against, or in front of, any house or building within the burgh.” But if it is to make a basis for action, such projection must be an obstruction to the safe and convenient passage of the public along any street, public or private.

First of all, the owner must be given notice to clear the obstruction away, and he has fourteen days to do it in. If he is contumacious or dilatory, he can be hauled up and fined 40s. If, three days after the conviction, he has not cleared away the offence, the authority may send men to do it and make him pay the bill.

In addition, it is an offence to put up such a projection without leave of the authorities (in writing), and he who does so is liable to a fine of 40s.

Old projections are on a different footing. By “old,” I mean projections that were lawfully in existence before the Police Act came into force in the burgh. In such cases the projections *may be removed* by the authority, but at its own expense; and if the owner of the building, or anybody else (*e.g.* an innkeeper whose hanging sign is removed), should suffer loss or damage, the authority must pay him fair and reasonable compensation. Thirty days’ notice must be given to the owner of the building before the authority begins to remove the projection.

I have used the phrase, “before the Police Act came into force in the

burgh." When did the Act come into force? It came into force on the 15th of May, 1893, in such burghs as were then in existence—except the five great towns (p. 1585). If after that, or at any future time, any populous place became or becomes a burgh, it came or comes into force at that moment. The five great towns can adopt, by resolution of the Council, the whole or any part of it—even one sub-section—to supplement their own Police Acts.

Buildings taken down to be rebuilt are (in England) liable to be set back or forward to regulate the line of the street. This is entirely different from the power that is vested in the urban authority to purchase premises or land for a new street or improving an old street. The power of the urban authority is to **prescribe the line of buildings**. That power arises when any house or building, situated in a street in an urban district, *has been* taken down to be rebuilt or altered. It is enough if only the front—that is, the part abutting in the street—has been taken down for the purpose of alteration or rebuilding. Then the opportunity arises. The urban authority may give notice to the owner of the property to this effect: We require you to set back your front to a certain line, or, We require you to bring forward your front to a certain line, as the case may be. They generally mark a line on a plan, and send to the owner, and tell him to build his front to that line.

The line need not be a mathematically straight line. If it is such a one that it preserves uniformity in the street, it is a good enough line.

The local authority must hasten to prescribe the line before the building owner has proceeded far with his work, or they will be too late. Suppose, for example, you have pulled down your shop, which stood a little further back than the shops to the left and right of you. You have sent in plans, which have been passed, for rebuilding on exactly the same ground. You begin the work, and have laid all the foundations of the new front, when the Corporation comes along with a notice saying that your building line has been fixed two feet nearer the middle of the street. You need not take any notice, because they are too late. They cannot let you put your new building in such a state that you would have to pull some of it down, and then serve you with a notice.

On the other hand, if you have merely begun some other part of the rebuilding, and it is possible for you to comply with the authority's demand without interfering with the part already commenced, you must comply.

The best plan, when you want to make sure of your ground, is to **send in the plans of your proposed new building or alteration before pulling down the old building**. Because if the Corporation or other local authority pass your plans without then and there giving you notice of alteration in the street line, they will not be allowed, after you have pulled your place down, to come in and order you to shift back. They have been known to try it, by way of doing things "on the cheap." If your plans are returned approved, you may begin to demolish your present place. If, however, a notice is appended, by which the street line is fixed ever so far back, and you are required to conform to that line, you can take your

time about it. It may be that the setting back would be of such an extent as to spoil your premises for the purpose of your particular business. In that case you can just put the plans away and do nothing.

Mind, **it is not by any means the law** that the local authority can interfere in this way every time you contemplate an alteration in your premises ; only when your premises (or the front of them) "have been taken down." This means taken down substantially—not every brick or stone, but that the front has ceased to exist, or the premises have ceased to exist, practically. Thus, a man named Hatch had a baker's shop, No. 65, George Street, in the town of Richmond (Surrey). He decided to convert the ground floor and the first floor into one storey, so as to make a fine, lofty shop. The building consisted of ground floor, first floor, and second floor, with a basement and cellarage. The three floors above-ground were of equal height, or nearly so—not quite eight feet from floor to ceiling. Behind the building was a bakehouse.

It was proposed to do the alterations in this way : The front of the building from the ground level to the top of the first floor was to be pulled down, leaving the side walls and the second floor front standing. By way of keeping the second floor from collapsing, there were to be timber supports to shore it up. The new front was to be chiefly window, the place of the old front wall being taken by brick piers and iron girders as a support to the second floor. The whole alterations were carried out in about six weeks.

Mr. Hatch having given notice to the Corporation of Richmond of his intention to commence the above alterations, they gave him leave to set up a hoarding (*see* Chap. V.) in the street, "during alterations of shop front." At the same time they wrote saying something about a new line of frontage. For the authorities of Richmond had made up their minds to widen George Street—not before it was necessary—by ten feet ; and they wanted to make a beginning with Mr. Hatch, whose shop was the first to be altered. Now if Hatch had set his shop back, as requested, he would have lost ten feet from front to back, and would have been ten feet in the rear of the then general line of frontage of George Street. After a good deal of parleying, Hatch refused to obey the requisition ; and, in consequence, the local authority tried to get an injunction to compel him to obey. But the Court of Appeal would not have it. They unanimously decided that the power to require the front to be set back had never arisen. To cause it to arise, the whole house or the whole front must be substantially pulled down. By "substantially," they declared themselves to mean wholly, except, perhaps, for some insignificant part. But here one-third of the front had not been touched. The moral of it is, that not every alteration of your front is a pulling-down, making you liable to be called on to set back the building. You may make very substantial alterations, so long as you do not pull the whole of your front down. The same applies to a house—a house is not pulled down as long as a substantial part of it remains standing.

IN SCOTLAND, **improvements in burghs** subject to the Burgh Police Acts can be carried out at less expense. The local authority (Commissioners, Burgh Council, etc.) may pass a resolution to acquire lands or premises for

the purpose of widening and improving the streets. Having resolved to improve a street, and to purchase all or part of the land and premises on one side thereof, they can first of all try to come to an agreement with the property owners to buy at an agreed price; but if any property owner sticks out, they can petition the sheriff for leave to put into force the compulsory part of the Lands Clauses Acts. If they obtain the sheriff's leave, they may then compel the property owners to sell. And as the

COMPULSORY PURCHASE OF LAND FOR PUBLIC IMPROVEMENTS

is a subject of great importance, and will frequently have to be mentioned, I may as well tell you here and now how it is done. The procedure is the same in England and Scotland. The local authority opens the ball by sending to the owner of the land a *notice to treat*. This notice must state that the local authority is willing to purchase the land and premises required, particulars of which are given in the notice, and to pay compensation for injury done by the works intended to be executed. It goes on to demand of the person on whom the notice is served, particulars of his interest in such lands and premises and his claims in respect thereof.

Suppose you have such a notice served upon you, as the owner of a feu, or the freeholder, or feuar or leaseholder of land required for public improvements,* you ought at once to reply giving the particulars asked for. If, at the end of twenty-one days from the notice having been served upon you, you have not come to an agreement as to price to be paid, or if you have not answered the demand, the amount must be settled by a special tribunal. Suppose you have answered, but have not claimed more than £50, the matter can be decided at once by two Justices of the Peace (or a stipendiary, or a London police magistrate) or (in Scotland) by the sheriff. In other cases you can either go to arbitration or have the matter decided by a jury. The matter in question is merely how much. If you elect to go to arbitration, you should *at once* give notice to the local authority, naming an arbitrator to act on your behalf. In England this arbitrator must be a practical surveyor. You must be quick to give **notice of arbitration**; because if you do not, the local authority may at once apply to the sheriff for a jury to be called together to decide the amount. Your notice must state what the nature of your interest is—*e.g.* that you are the freeholder, feuar, leaseholder for so many years, tenant, or whatever you are; and also the amount of compensation claimed.

The notice need not be in any particular form of words, so long as it is good in substance, thus:

“To the Mayor and Corporation of the Borough of Longville.

“With reference to your notice dated the 10th day of December, 1903, I was informed that you, the urban authority for the Borough of

* This part of the chapter will be found to apply to purchases by, *e.g.* gas companies, water companies, and other undertakers of big works who must have land, as well as to municipal corporations and other urban authorities

"Longville, require to purchase a certain shop, yard, and premises known as 72, Green Road, Longville. I hereby inform you that I am the holder in fee simple [*or the leaseholder for a term, unexpired, of twenty-one years, or whatever it may be*] of the shop and premises aforesaid (subject to a rent of [£40] per annum), and I hereby give you further notice that I claim as compensation for my interest in the said shop and premises, and for the damage that will be done to me by the execution of the work intended to be performed by you, the sum of [£1,000].

"And I give you further notice that unless you agree to pay me the said sum of [£1,000], it is my desire to have the amount of compensation to be paid to me determined by arbitration. [If you think you would prefer a jury, say "determined by a jury."]

"Dated the 20th day of December, 1903.

"(Signed) JOHN STYLES."

I may say that a **yearly tenant** cannot go to arbitration. If he cannot agree to a sum to be paid him, he must submit to have his claim decided by two justices (or a Metropolitan magistrate, or a stipendiary), or by the sheriff in Scotland.

My own practice in these cases, when arbitration has been decided on, is to advise my client to agree to the appointment of a single arbitrator. As a rule, the lawyers on each side can agree on a suitable surveyor who may be trusted to do ample justice all round. If you do not agree to this, however, you must, by notice in writing, appoint an arbitrator, and request the local authority to do the like. Or they can give you notice to the same effect. If one of you has appointed an arbitrator, and given the other side fourteen days' notice to appoint one, and at the end of the fourteen days the other side has not appointed one, the person already appointed by the one side acts as single arbitrator. The two arbitrators, before starting on their task, must appoint an umpire. If they cannot agree, one side can get an umpire (Scots "oversman") appointed by applying to the Board of Trade.

If the local authority offers a reasonable sum, take it. If you do not, you may be sorry for it. For if, on the arbitration, or the hearing before the sheriff's jury, you are awarded no more than they offered you, you will have to pay half the arbitrator's fees, and pay all your own costs and expenses. On the other hand, if you are awarded more than was offered to you, the local authority pays all the costs and expenses and fees.

The damages or compensation include the value of the land—or, rather, the value of your interest in it—any loss you will sustain by being obliged to clear out (*e.g.* if you keep a shop there, and lose goodwill by removing), any damage done to your adjoining property, and something extra (generally 10 per cent.) for compulsory sale.

We now come to consider what is the meaning of "**house or building**" as used in the Acts. The Act of 1875, which contains many definitions, does not define either. "House" is said to include "schools, factories, and other buildings where persons are employed." Thus, the term

"house" is clearly not the same thing as "dwelling-house"—a term also used in the Acts. I suppose dwelling-house must mean a place where a person sleeps habitually. That is the way it has always been understood in other branches of the law. Burglary, for instance, means breaking into a dwelling-house at night. If one breaks into a place other than a dwelling-house, the offence is reduced to housebreaking—a much less serious crime. So that probably when the Acts speak of "converting a building into a dwelling house," they mean converting it from a place where nobody sleeps to a place where somebody does sleep. It was held in one case that any building which might be used for human habitation was a house. Thus, a church of the Established Church is not a house, because it cannot be used for purposes of human habitation, being consecrated or dedicated to God. Neither the parson, nor the parishioners, nor any other person soever can alter this. But a Nonconformist chapel is a house, because by the consent of the trustees thereof, and of the beneficiaries under the trust, it might be sold or let out for human habitation.

"Building" is a term much wider than "house." Thus an open shop, connected with a newly built house, roofed in, is a building. A certain butcher knocked up a wooden erection 30 ft. \times 12 ft. He mounted it on wheels, hired a piece of vacant land at the corner of a new street, and brought his erection there to be used as a shop. He had the gas laid on, and water-spouts to carry off the rain from the roof. There was no glass window, but an open side. This was held to be a building; and the butcher got into trouble for putting it there without leave of the authority. It would seem that there must be some degree of permanency about the structure, but how much nobody can say.

A building with foundations would be a "building" within the Acts. But foundations are not necessary. Thus a wooden building of considerable size, used as a shop, resting on wooden joists, but having no foundations, has been decided to be a "building." So also has a house resting on the ground without even joists.

It has been considered doubtful how far a wall is a "building." In England a wall of a substantial character has been held to be an "erection," but not a building.

It may be taken for granted that mere temporary structures, such as wooden sheds run up near engineering works for the workmen's tools, are not "buildings." Nor is a builder's pay-office, made of wood and resting on wheels, and drawn about from one job to another. A building need not necessarily be above the surface of the street—thus, a cellar is a building.

Under the Scottish Act (Burgh Police Act, 1892), "building" is said to include every structure or erection of what kind and nature soever, *and every part thereof*. This seems to be more exhaustive than the English definition. At one time the Court of Sessions held that a parapet wall 1 foot high, surrounded by a railing 5 ft. 3 in. high, was not a building. But that was long before the Burgh Police Act, 1892, came into force. I do not see how one can escape from saying that any wall is an "erection" or "structure."

The words "any part thereof" will probably cause trouble some day; and the Scottish Courts may be bound to exercise great ingenuity in finding a way out of many ridiculous propositions that could be founded on the statute. Thus, a brick is a part of a brick wall: a brick wall is an erection or structure: an erection or structure is a building: any part of an erection or structure is a building: therefore a brick is a building.

Now I do not for a moment suppose either that Parliament intended the statute to be taken quite so literally as that; nor that any judge will ever credit Parliament with such an intention, or read an Act of Parliament in such a way. I suppose it will come to this—that as a case comes before them, the judges will ask, "Can this be fairly called a structure or erection, or any part of a structure or erection?" And on the answer they give to that question they will find their judgment.

IN LONDON, buildings are of **three kinds**: there is the domestic building, the public building, and the building of the warehouse class.

The domestic building is, in general, a dwelling-house, and any other building not public and not of the warehouse class. It seems a little funny to say so, but this definition includes offices and counting-houses. But offices and counting-houses are not domestic for the purposes of (a) lighting and ventilation of habitable basements, (b) space about and at the rear of the buildings, (c) courts within buildings. A dwelling-house does not mean a place where any single person dwells. The circumstances of London are such that in many buildings somebody sleeps, though it would be a farce to treat the whole building as a dwelling-house for building and sanitary purposes. So the term is defined to mean "a building used or constructed, or adapted to be used, wholly or principally, for human habitation." This shuts out buildings where no one but a caretaker lives on the premises.

A public building is a building used, or made to be used, as a church, chapel, or place of public worship; or school, or college, or place of instruction (not being a dwelling-house so used); hospital, workhouse, public theatre, hall, concert-room, ball-room, lecture-room, library, exhibition-room; or used as a public place of assembly; hotel, lodging-house, home, refuge, or shelter; but the last (beginning with "hotel"), only where the building is bigger than 250,000 cubic feet, or has sleeping accommodation for more than 100 persons.

A building of the warehouse class means warehouse, factory, manufactory, brewery, distillery, and any other building exceeding in cubical extent 150,000 cubic feet, and which is neither a domestic nor a public building. This would possibly include a very large building, such as one sees in London, used as offices.

"Cubical extent" means the space contained within the *external* surfaces of the walls and roof, and the upper surface of the floor of the lowest storey—*e.g.* the cellar, if there is one.

My London readers are hereby exhorted to pay particular attention to these definitions of buildings; because it makes a very great deal of difference as to many things—party walls, extent or size of building, external walls, and many other things, according as one is dealing with a building of the domestic, the public, or the warehouse class

CHAPTER II.

LIABILITY IN RESPECT OF STREETS.

Laying out new streets—How new streets arise—Street does not mean highway—Powers of urban authority—To make bye-laws—Level of new street—Width—Construction—Sewerage—Plans and sections to be deposited before new street laid out—Instances of new streets—Rules applying to London—When an old way is to be adapted to new requirements—L.C.C. may refuse to sanction plans on nine grounds—Must give reasons—Local bye-laws in rest of England—SCOTLAND—Local authority fix level and gradient of new street—The time limit—Rules to be observed—Width of new streets—In London—In rest of England—In Scotland—PRIVATE STREETS—Liability of owner to keep in order—In certain cases local authority may sewer, pave, etc., and charge the owner—What the local authority must do first—Objection by the owners—Who may be made to contribute—The six lawful objections—Where street is a common highway—Unreasonableness—In some districts the owners must be asked to make the street—If they refuse, local authority may step in—Expenses are charged on the property—Liability to keep private street in repair—Exception in the case of sewerage—Taking over private streets—The law of SCOTLAND on these subjects—Liability of Scottish proprietors to make footways.

A BUILDING owner sometimes wants to lay out a whole estate, or at all events to **lay out a new street, or to build in a new street.** Sir George Jessel once said: "Now a new street may arise in one of two ways: A person may take a grass field, or a country lane; he may take it and build continuous lines of houses so as to form what is commonly called a street. By continuous lines, I do not mean that there is to be no break or interval, but there must be a certain degree of continuity. A new street may arise in another way. That is, where it is not from the first laid out as a street in a formal manner, but may be considered to grow up, as it were, of itself." London presents first-rate instances of both kinds of new streets. The suburban villa has, for the most part, been built on the first kind, where the new street has been planned for a street from the commencement, where a builder has taken a field or two, planned to build as many houses as could be crowded into the ground, run a road or two in such lines as he thought best, and straightway started to throw together houses on both sides thereof. This kind of street is a "street" from the beginning almost.

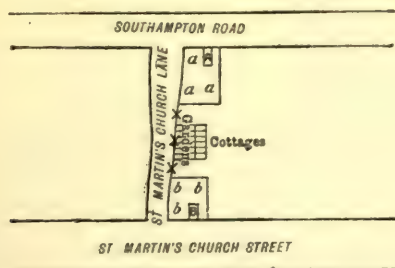
But when you have a road like the Brighton Road, running through Streatham and Croydon, or the Great North Road, running through Highgate and East Finchley, you have instances of streets that have only gradually become "streets." Persons desiring to build have acquired here a plot and there a plot by the side of the highway, and have run up a house or two. Others have recognised the advantages of the site, and more houses have been put up, until at last you have had that "degree of continuity" in the houses necessary to constitute the highway a street. I could tell you a date at

which the Brighton Road between Brixton and Croydon was not a street. I can tell you that now it is a street. But for the life of me I should be puzzled to say at what precise time the change took place.

Now every URBAN AUTHORITY may make **bye-laws with respect to certain matters connected with new streets.** These are:

- (a) The level of new streets ;
- (b) The width of new streets ;
- (c) The construction of new streets ;
- (d) The sewerage of new streets ;
- (e) The deposit of plans and sections by persons intending to lay out new streets.

It becomes very important, therefore, to know **when you are "laying out a new street,"** or when a place is a "new street." Thus, it is usual in bye-laws to fix the minimum width of streets in this way : "No person shall lay out any new street, not being a carriage-way, of less width than 18 feet ; or being a carriage-way, of less width than 40 feet." The kind of case that arises is such as arose in the district of New Sarum. There was a bye-law in that district to the effect that no street, not being a carriage-way, should be of a less width than 18 feet. Now there was in Milford Parish, New Sarum, a narrow lane called St. Martin's Church Lane, one end of which came out into Southampton Road and the other into St. Martin's Church Street. A Mr. Williams had a plot of ground, half an acre or so, abutting on the lane in the middle of one side of it. Southampton Road and St. Martin's Church Street were both "streets"—that is, built upon continuously, so that at either end of the lane were houses whose garden walls abutted on the lane. Williams's land had also a wall abutting on the lane. Perhaps the following plan will make the matter clear:—



In this plan A is a house in Southampton Road, and *a* the garden thereof. B is a house at the other end of the lane, facing St. Martin's Church Street, and *b* is the garden thereof. X is Williams's wall, fencing off his land from the lane. Now within his grounds Williams built the six cottages each of which had a garden, in front, stretching down to the lane. The gardens were 15 feet long.

Mr. Williams had the plans of his cottages passed by the New Sarum

local authority. He built them, and then pulled down the wall X and put a fence in front of the cottage gardens. Now the lane was only 6 ft. 5 in. wide at one end, and 5 ft. 6 in. at the other; and the local authority, as soon as Williams put up his new fence, objected that he had made the lane into a "street," and therefore he must put the fence about 12 to 13 feet back, so as to leave the lane 18 feet wide. It was decided by the High Court that the lane had not become a "street" merely by the building of the six cottages. So that, as one swallow does not make a summer, neither does the erection of one house, or even of one row of houses, make a street.

IN LONDON no person can commence to form or lay out any street, whether it be a carriage-way or only a footway, without first submitting plans and sections thereof to the L.C.C., applying in writing to the L.C.C. for permission to lay out the street, and obtaining the written sanction of that body.

The form of the plans, sections, and particulars which are to be sent in to the Council can be ascertained on perusing a set of printed regulations issued by the Council and open to inspection at the L.C.C. office, Superintending Architect's department. The regulations relate to the scale of plans (at the time of writing it is 88 feet to the inch), and what they must contain—*e.g.* longitudinal sections 88 feet to the inch horizontal and 11 feet to the inch vertical, showing natural and intended level of the street, and cross-section on the scale of 22 feet to the inch; key plan of the locality; proposed name of street—you must not use one already in use. Note, reader, that as these regulations may be altered from time to time by the Council, it is advisable to get a copy from the Superintending Architect's office before beginning your plans.

You observe that you are **not to commence forming or laying out** a street without the above sanction, which can only be given if you have complied with the regulations, and which can be refused on certain other grounds to be shown hereafter. When do you "commence" to form or lay out a street? For the purposes of the London Act (it is different in the country) you commence if you

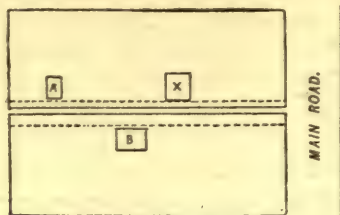
- (a) erect a boundary fence or wall
- or (b) lay down lines of kerbing,
- or (c) level the surface of the ground,

so as to define or mark out the course or direction of a street. Further, you must be held to "commence forming or laying out a street" if you

- (d) form the foundations of a house in such a manner and such a position as that "the house will or may become one of three or more houses abutting on or erected beside land on which a street is intended to be or may be hereafter formed"

The part in quotation marks comprises the words of the statute. It is a well-meant attempt on the part of the framers of the Act to avoid the awkward questions that have been in the habit of arising, as to whether a given

something was or was not a new street. The most difficult part in practice is to discover what in the world is meant by the last part of the section—"one of three or more houses," etc. What the framer of the Act had in his mind, doubtless, was this:



Let the rough square marked out above represent a piece of land, vacant until recently, which has been acquired by Mr. Scroggins, who has a mind to develop it. Instead, however, of making a road or roads first, he has, for reasons of economy, let the plot of ground A to Mr. Boggins, who has built himself a villa. Along comes Mr. Noggins. He buys a site for a villa, B, and builds thereon. I wish you to understand that the owner of the land has not formulated any plan or scheme for developing his land. He is simply willing to sell or let on lease any part of the land to anybody who will give him a fair price for it and will undertake to put up a house of good residential class.

The next person to be smitten with the beauties and advantages of the Scroggins Park Estate is Doggins, who buys the plot X, and there begins to build. As soon as he has formed the foundations of his villa, the L.C.C. district surveyor pounces on him. The district surveyor says, "You have formed the foundations of a house in such manner and position that it will become one of three erected beside land on which a street (::::) may be hereafter laid out or formed." Now the only "way" of any kind on the Scroggins Park Estate is the footpath ===== which Boggins and Noggins use. "But," says the district surveyor, "the land between the dotted lines (::::) is intended to be, or may hereafter be, turned into a street. Therefore, Mr. Doggins, you ought, before you started on your foundations, to have sent a plan of the new street to the Council!"

Doggins never counted on this. He remonstrates. He says it is impossible for him to lay out a new street between the dotted lines, because that laid is in nowise his. Now, has Doggins broken the law or not? I myself think he has, unless he can bring himself within the exception provided by the statute—which is, that anyone who does any of the things (a), (b), (c), or (d), for some other purpose than that of forming or laying out a street, does not in fact "commence to lay out or form a street." This is confusion worse confounded. If I erect a boundary fence so as to define the course or direction of a street, but for some purpose other than that of forming or laying out a street, I am not commencing to form or lay out a street! And so on

But, mark you, actions speak louder than words. If you have in fact laid out a street, you may protest as much as you like that such was not your intention ; it will avail you nothing. There was one Armstrong, of Highgate, who had a building estate known as the Cleveland Estate, on which he proposed to build. The land was nearly four acres in extent, situated close to Parliament Fields. It adjoined a public carriage-way called The Grove, which stands a little off the Highgate Road. On another side the Cleveland Estate abutted on Parliament Hill. On the third and fourth sides it was bounded by private lands. There was no public right-of-way over the estate at all, and the only means of access to it was afforded by The Grove. There was also a private right-of-way for foot-passengers leading to Parliament Hill.

Mr. Armstrong proposed to pull down certain old houses and lay out the estate on an entirely new plan—that is, to put up twenty blocks of flats ("mansions," they are generally called in London). A carriage-way was to be started at The Grove, and on each side of this carriage-way were to be put two blocks of flats. The other sixteen blocks were to be built away from the public road (The Grove) round a quadrangle. In the middle of the quadrangle was to be a garden of an ornamental kind ; round the quadrangle a carriage-way 40 feet wide, from which to each block of flats was a separate entrance.

The only entrance to this carriage-way from the public road was by the entrance in The Grove—*i.e.* there was to be no through road to anywhere ; a gate was to be put at this entrance, where a porter was to be kept, and it was proposed to keep the whole estate and the quadrangle strictly private. No foot-passenger or vehicle was to be admitted to the quadrangle except upon business at one of the flats. Mr. Armstrong had first submitted his scheme to the L.C.C. as one for a public street—that is, without the gate at the entrance to the carriage road ; but the L.C.C. refused to sanction the street as a carriage-way because it had not an opening at each end. Then Mr. Armstrong decided to make the street a private one, and began to build his blocks of flats.

As soon as he had well started, the Council summoned him for having "commenced to lay out or form a street" without having had their sanction. His reply was that as this was not a public way, but a private one, it did not come under the Council's jurisdiction. "Street," he said, meant public street. But the High Court decided against his contention. A street, they said, was a matter of fact, not of intention. If you built houses to form a street, you came within the Act, whether you meant the place to be a "street" or not, and whether it was for public use or not.

Not only does the London Building Act require the sanction of the L.C.C. to be given (and plans prepared) when a new street is to be laid out, but also **when an old way is to be adapted** to uses of an improved kind—as, for example, to adapt for carriage traffic any street or way not previously so adapted ; or to turn into a "street," for foot-traffic, an old "way" not previously a "street."

The London County Council have not an absolute discretion to refuse their

sanction to the laying out or new streets, or to the adaptation of old "ways" to new requirements. There are **certain causes for which sanction to a proposed new street may be refused.** They are :

- (1) That the street, if a carriage-way, is not 40 feet wide at least, or more if required by the Council (*see* p. 1611);
- (2) That the street, if a footway, is not 20 feet wide;
- (3) That the street, if over 60 feet long, is not open at both ends from the ground upwards;
- (4) That the street, if under 60 feet long, but of a length greater than its breadth, is not open at both ends from the ground upwards;
- (5) That the street (this does not apply to the City) will not form direct communication between two streets;
- (6) If the street is a carriage-way (City not included), that it will not form direct communication between two other streets that are both carriage-ways;
- (7) That a proposed foot-traffic street ought not to be for foot-traffic only;
- (8) That the street (if a carriage-way) is steeper than one in twenty;
- (9) That the street contravenes a bye-law of the L.C.C.

Now there is this very sensible provision in the London Building Act : that if the Council refuse permission to lay out a new street, they are **bound to give their reasons.** So that if they refuse on some illegal ground, their action can be challenged. The place to challenge it is in the tribunal of appeal (*see* p. 1597). In the same way, the Council must give their reasons if they refuse to sanction a plan for the adaptation of an old way for a new street.

IN ENGLAND (outside London) any urban authority can require all plans of new streets to be submitted before a street is laid out. This is done by bye-law, and the requirements vary in different districts. If you want to know what your own district's rules are, you must consult your local bye-laws.

IN SCOTLAND, as in England, if you propose to form or lay out a new street, you must give notice to the Town Council (to the surveyor, if there be one), lodging a plan, with longitudinal and cross sections, showing levels and means of drainage. Then (and here is an important difference from English law) **the Council fixes the level and gradient** of the new street. To this level and this gradient all who build in the street must conform. The Council may not take more than **one month** to fix the level and gradient. If they do, the property owner can fix his own level and gradient—taking care to keep within the terms of the statute, which are

- (1) Width not less than 36 feet;
- (2) Buildings not more than one and a half times as high as the street is wide—measuring from the pavement level;

(N.B.—Where the street fronts any links or common, or under exceptional circumstances, the Council may give leave for a greater height.)

- (3) The drainage must be made to fall into the sewers—to fit into the sewerage system of the district—the plan of which you can always see at the surveyor's office ;
- (4) You must not erect any building over the sewers in the road ; nor excavate any vault, arch, or cell under the carriage-way ;
- (5) Sewers and drains must be trapped and ventilated ;
- (6) No building must be built upon a lower level than will allow the drainage of the waste and refuse to fall into some sewer belonging to the Council.

You must lay out your street so as to enable these matters to be properly done ; and if you do this, and the Council should afterwards desire an alteration—well, they are entitled by law to make that alteration at their own expense ; or may require you to do it (*e.g.* to raise or lower gas pipes, drains, and so on), them paying for it.

It is important to know, when you are planning the laying-out of a building estate, how much you have to allow for street-space. *How wide must new streets be ?*

IN LONDON the standard width of a new street is 40 feet, not measured from house to house, but from the nearest part of what is called the curtilage to the nearest curtilage on the other side of the street. Where there is a forecourt, or front garden, enclosed by a wall, or by railings, the measurement begins at the wall or railings. The 40-foot road is for a carriage-way. The L.C.C. may, after consultation with the Borough Council, if it should be thought that the new street is in a position to warrant such a step, order it to be made more than 40 feet wide—anything up to 60 feet. And as soon as the new street begins to be formed, no one may put up a new building within 20 feet (more, if the road is wider—*e.g.* 22 feet if the street is 44 feet wide, 30 feet if it is 60 feet wide). When the L.C.C. orders the new street to be made more than 40 feet wide, anyone aggrieved may appeal to the proper tribunal.

A site that has been occupied by a building within seven years may be built on again ; but the person about to build must send to the district surveyor of the L.C.C. a plan of the old building, showing exactly the ground it occupied. This right to build on an old site is subject to the right of the Council to demand that the building shall be put back to the general line of buildings in the street.

When the Council requires a proposed new street to be laid out of a greater width than 40 feet, anybody whose land may have been required to be put into the street is entitled to compensation, provided that on the 1st of January, 1895, or at any time during the preceding seven years, the land was built on, or was used as a market garden.

A new street intended for foot traffic only must be at least 20 feet wide.

Similar rules prevail where the owner of the ground proposes to adapt for carriage-traffic or foot-traffic (as the case may be) a way not previously

so adapted. That is, the L.C.C. may require the way to be widened to 40 feet (carriage) or 20 feet (foot-traffic).

IN ENGLAND, OUTSIDE LONDON, in all urban districts (*see* p. 1293), the urban authority can make bye-laws governing the width of new streets. These bye-laws vary considerably in different parts of the country, and no doubt the Councils have a considerable discretion as to the width of new streets in their own localities. They must not make unreasonable bye-laws; and that is about the only check there is on them. A man once attacked a bye-law which required every new street of above 100 feet in length to be at least 30 feet wide. He said it was unreasonable; but the Court said it was not. It has been held reasonable, also, for a bye-law to require an entrance to a street to be of the width of the street, such entrance to be open from the level of the street upwards. This bye-law is aimed at bottle-neck streets, and streets with gates across them.

IN SCOTLAND, in all burghs (except the five towns of Edinburgh, Glasgow, Greenock, Perth, and Aberdeen) all new streets and courts are required to be of the width of 36 feet at least, for carriage and footways together. But the Town Council may, on consideration of special circumstances, allow a mews or lane to be built not less than $12\frac{1}{2}$ feet wide.

Now **in respect of private streets**, local urban authorities have considerable powers. For this purpose "street" has a very wide meaning. It includes "any highway (not being a turnpike road), bridge (not being a county bridge), road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not." Which seems to bring in any kind of foot- or carriage-way so far built about as to be a "street." But for this purpose it excludes a highway repairable by the inhabitants at large. Exactly what powers they have depends on whether

- (a) The local authority has adopted for its district Part III. of the Public Health Act, 1890;
- (b) The local authority has adopted for its district the Private Streets' Works Act, 1892.

Seeing that most urban authorities have adopted the last-named, on account of its great convenience, I will first deal with *places where the Private Streets' Works Act is in force*. You must go down to the office of the town clerk, or clerk to the District Council, or borough or district surveyor, if you want to know whether or not the Act has been adopted in your district. If it has, you will find the law to be as follows:—

- (1) Where the street in question is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the local authority, the local authority may perform all or any of those works at the expense of the property-owners in or off the street. The local authority opens proceedings by passing a resolution to do the works.
- (2) Before they begin the work, the borough or district surveyor must

prepare (a) a specification of the works to be done, with (if necessary) plans and sections; (b) an estimate of the probable expense; (c) a statement called an "apportionment," showing how the different property-owners will have to contribute to that expense.

- (3) The local authority must pass the specification, estimate, and apportionment.
- (4) A copy of a notice of their intention to do the works must be posted in or near the street, another copy served on every owner whose name is known; and the resolution passing the specification, estimate, and apportionment must be advertised once each in two successive weeks in one or more local papers. This is to give the widest possible notice to persons who may be interested.

It is necessary that *the specification* should describe the works to be done generally, and if the work is structural—*e.g.* paving the carriage-way, or flagging the footway or causeway—it must specify the foundation, form, material, and dimensions thereof.

The plans and sections must show the constructive character of the works, connections with other streets, or sewers, etc., lines and level of the work.

The estimates must show particulars (not a mere lump sum, but some details showing how the total is arrived at) of the probable cost of the work. The probable cost may include a commission of 5 per cent. (or less) for surveys, superintendence, and notices. It should also be noted that the local authority can charge for the cost of bringing the street, as regards sewerage, drainage, level, or other matters, into conformity with other streets. They may also put in and charge for separate sewers for sewage and surface water.

The provisional apportionment, which is very important, must state the amounts charged on the different premises in the street; the names of the owners, or reputed owners; and—for this is very important, and is quite a new principle—the basis on which the apportionment is proposed to be made; for example, whether it is to be made merely on the basis of frontage (*e.g.* that the premises fronting the street pay according to width of frontage), or how otherwise.

Let me here pause to say that the **principle of apportionment**, except where the Private Streets' Works Act, 1892, has been adopted by the Council, is that the frontages pay in proportion to the frontage abutting on the street. And even where the Act has been adopted, the urban authority must, unless it passes a resolution to the contrary, charge the expense of the works done in the private street, or part of a street, to the frontages according to their frontage. But the urban authority may, if it thinks it just, pass a resolution that in settling the apportionment there shall be taken into account—

- (a) The comparative amount of benefit to be derived by any premises from the works; and
- (b) The amount and value of any work already done by the owners or occupiers of any such premises. For example, if one side of

the street has been kerbed and flagged at the owners' expense, the owners on that side may be allowed the value of that work.

Further, if abutting on the street there is land belonging to a railway or canal, and used by the railway or canal company as part of its undertaking (*i.e.* not as station-master's house, etc.), nothing can be charged against the company unless and until the railway or canal land has some direct communication or opening in the street. So that if you have the luck to have a house in an unpaved street, abutting on which is the back of a railway goods-yard, with no opening into the street, you must help to pay for that part of the road next to the goods-yard; but if the railway company at any future time opens a gate into the street, it will have to pay up, and you will get your money back. If the local authority thinks it right, however, it can pay the railway company's share out of the rates; and get it back if the premises of the company should afterwards communicate with the street.

- (c) The authority may also include any premises which do not front, adjoin, or abut on the street or part of the street; but access to which is obtained from the street through a court, passage, or otherwise, and which in its opinion will be benefited by the works.

Now suppose you, as owner of one of the houses in a private street, or in a yard, or square, or court off a private street, have had a notice, or have seen in the papers that the street is to be paved, etc., by the District Council, and that you are to be made to pay a certain proportion of the cost. What are you to do? If the specification, estimate, and apportionment seem to you to be fair and proper, you can do nothing. But suppose they do not; you will naturally want to know

How to object, and on what grounds.—You must be quick; for you have only a month from the first publication of the resolution approving the plans, etc., to object in. During that month you can go to the office of the Council and examine the plans, sections, etc., free. And within the month you may take objection on no fewer than six grounds. You must take them in a proper fashion—to wit, *in writing*; and the writing must *be served*—*i.e.* left at, or sent by post to, the office of the urban authority. And it must state the *ground* of objection. As I have said, you may take six objections, or any one of the six; and if you do not take them within the month, you cannot take them afterwards—that is the very object with which the Act was passed.

THE SIX LAWFUL OBJECTIONS ARE:

1. That the alleged street, or part of a street, is **not a street** or part of a street within the meaning of the Act.

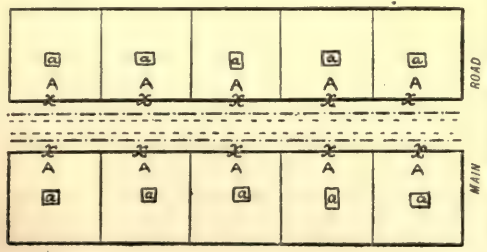
This objection could have been taken in cases like that mentioned on p. 1606. On p. 1605 you will find some account of when a "way" becomes a "street." It depends on the continuity of the buildings.

II. That the street is (in whole or in part) a highway repairable by the public at large.

Once every highway was repairable by the public at large, but now it is not. A way that had been "dedicated to the public" (*see* p. 1096) and used by the public became repairable by the parish. This applies to all roads, of whatever kind, dedicated to the public before the Highways Act, 1835. The one exception is where, by some ancient tenure or prescription, some private person was bound to repair a particular road. But with respect to roads and ways dedicated to the public and used by them since 1835, though they become highways, they only become repairable by the inhabitants at large if certain formalities be observed. If the owner of a highway wishes to hand it over to the public to repair (I am now dealing with a highway that is not, at the time, a "street"—*see* p. 1605), he can give notice (three months) describing the way and its situation and extent to the District Council, and stating his intention of dedicating it to the public. He must then go before two Justices of the Peace in Petty Sessions, and show that the way is of proper width and substantially made. He can ask them to go and look at it, if he likes. They then grant a certificate, which is enrolled at the next Quarter Sessions. The owner of the highway keeps it in repair for twelve months, and then the public must repair it. But the District Council can oppose the road before it gets to the justices, by resolving that it is of no public utility. Then the parties (owner and Council) appear before the justices and try whether the Council's objection is good or not.

The *width* must be at least 20 feet for a carriage- or cart-way, with 3 feet on each side for foot-passengers and 8 feet for a horse-way. But this width of carriage- or cart-way need only be observed when the way leads to a market town. If you happen, therefore, to have built by the side of a road or way which was a public way before 1835, or which has been certified by two justices and enrolled at Quarter Sessions as aforesaid, that way is a "highway repairable by the public at large," and you cannot be called upon to pay a penny for sewerage, paving, etc.

Let us suppose a very common case, namely, that you are the owner of land through which runs a narrow highway—a mere footway—repairable by the inhabitants at large. The town nearest to that land begins to spread out, and you find all your neighbours laying out their estates in building plots. You follow their example; and soon there springs up a new street—thus—



A A A = the gardens of the new houses. *a a a* = the new houses. The space between the front fences (*x x x*) of the gardens is the new street. The space between the dotted lines *.....* is the old highway, repairable by the inhabitants at large.

Now let us suppose that the local bye-laws did not make it compulsory for you to pave and sewer your street before your building plans were approved by the local authority; and that the local authority, having adopted the Private Streets' Works Act, proposes to do the work and make you pay the expenses thereof. A notice is served on you, as above, with plans, specifications, and all the rest of it. The authority proposes to put a kerb along the line marked — — —, to make footpaths on both sides and pave them with asphalt; to construct a sewer; to erect lamp-posts; and to pave with wood the carriage-way—that is, the space *==::==*, which, as you see, includes the old highway. And, as you own all the houses fronting the street, it also proposes to charge you with the whole expense.

You are entitled to object as to part. You can object, namely, to being charged with the expense of paving the carriage-way along the strip *==::==*. This the local authority must do at its own expense; because that strip is a highway repairable by the inhabitants at large, and the fact that you have converted an old highway into a new street does not make you liable to repair, or maintain, or make up that highway. But you will be liable to pay for all the rest of the works.

III. A **material informality**, defect, or error in the local authority's proceedings.

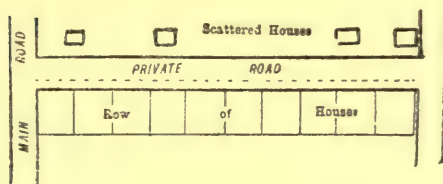
That is, that the resolution was not passed, or was passed at a meeting not properly called, etc.; that notices were not given as required by the Act (see p. 1613), or that the plans, sections, or estimate were not in proper form (see p. 1613).

IV. That the proposed works are **insufficient** or **unreasonable**, or the **estimate is excessive**.

This is an extremely important section. By it the property-owner has a distinct protection against extravagance, or the abuse of its powers by the local authority. Protection against favouritism in the matter of the apportionment is afforded by the next two sections:—

V. That any **premises ought to be included in or excluded from the provisional apportionment**

To take an example:—Suppose this is a private road, with houses all up one side, but only a few on the other. The carriage-way, let us suppose, has been already made in a satisfactory manner, but there is no footpath. The local authority resolves to make a footpath, but only on one side—as shown by the dotted line.



The local authority, in its provisional apportionment, has put the whole of the cost of the new footway on the owners of the row of houses on the south side, leaving the owners of the premises on the north side of the road right out of the expense. This it has no power to do. When works are done in a private street, all the premises in that street are bound to contribute—no matter whether the works are on their side of the street or not. When I say “all the premises in that street,” I mean all the premises in that part of the street where the works are. Thus, if you have a street half a mile long, and the authorities resolve to pave and light it half-way up, the premises on both sides in that half of the street must pay. As I have already said, the authority can make distinctions as to amount of contribution proportional to the benefit to be received from the improvement by different premises. But even then it is not uncontrolled; for the last objection the property-owner is entitled to make is

- VI. That the provisional apportionment is **incorrect in respect of some matter of fact** [what that fact is, you must state in your objection]. Or, where the apportionment is not made simply on the basis of extent of frontage, you may object that the benefit to be derived by any person included is too much [that is, if you are “the person”] or too little [if someone else is “the person”]. Or that you have not been allowed enough [or that someone else has been allowed too much] for the work already done in the street at your [or his] own expense.

One great advantage of the Private Streets' Works Act is that it provides a cheap and expeditious method of settling disputes between the local authority and the property-owner as to liability, amount, and so on. I will suppose you have given a notice of objection within the month to (say) the District Council. They wait until the month is up. Then they either amend their plans, etc., to meet the objections, or else apply to the local justices in Petty Sessions to hear the objections. You get notice of the day fixed, and on that day you can go before the justices and **maintain your objections**. The magistrates hear all the objections, hear all that the District Council have to say, and then decide the points in dispute. They have very wide powers. They can quash the whole scheme if they think fit; or they can wipe out any part of it. They can amend all or any of the

resolutions, plans, sections, estimates, and provisional apportionment. Thus, suppose your house has a stable and washhouse—you being a respectable man. (A respectable man, you know, is “one who keeps a gig”!) Naturally you will want the footway opposite your gate left so that your gig can drive in. You will want the kerbstone discontinued for the width of the gate, and the footpath shaded down into the gutter. If the local authority has not provided for this, the justices will probably do it for them by amending the plan.

If your objection is at all a serious one, you should instruct a solicitor to act for you. He will do the thing a great deal better than you could, in all probability; and you will probably get an order, if you sustain your objection, for the local authority to pay your law costs. If, on the other hand, your objection is over-ruled, you may be ordered to pay some costs to the local authority.

IN URBAN DISTRICTS WHERE THIS ACT HAS NOT BEEN ADOPTED,

the law is very different: (i.) Instead of the local authority having power to issue a notice in the first instance that they are going to do the work and charge the owners, they must, first of all, where a private street is not sewered, levelled, paved, metalled, flagged, channelled, and made good to their satisfaction, give notice to the owners requiring them to do the work. The notice must state that a plan of the work required to be done has been made by the district surveyor, and such plan can be seen at the office of the authority. Thus the owners of the premises abutting on the street have a chance to do the work themselves; and only if they do not do it can the authority take in hand to do it and charge them the cost.

(ii.) Having done the work, the local authority demands from each frontager a share of the expenses thereof, according to his frontage.

(iii.) No difference or allowance can be made because one frontager's premises get more advantage than another's. Nor can any charge be made to people who have property in (say) a court approached by a passage off the street, though their property benefits by the improvement.

The frontagers cannot make and try out beforehand any question as to the reasonableness of the works, or the cost thereof, or the proportions in which they are to be charged. They must wait until the local authority, having sewered, paved, etc., the street, brings an action against them for payment. Then they can take any objection they think proper—*e.g.* that the “street” is not a “street,” or that it is a highway repairable by the public at large (p. 1615).

When works have been done under the Private Streets' Works Act, the local authority makes a final apportionment amongst the owners of the premises which were included in the provisional apportionment. It may be that the improvement has cost less than the estimate, or (what is much more likely) it has cost more. In that case the property-owners will have to pay proportionately. Notice of the final apportionment must be given, and within two months the property-owner has the chance of objecting to the final

apportionment in the same way as he did to the provisional (pp. 1614-7). The objections he may take are three in number, viz. :—

- (1) That the final apportionment has been incorrectly made. This means that the final apportionment is not in the same proportion as the original apportionment was.
- (2) That the actual expenses of the improvement are more than 15 per cent. over the estimate, and that without sufficient reason.
- (3) That the authority unreasonably departed from the plans, sections, and specifications. In other words, that the authority gave notice they were going to make a particular kind of improvement in a particular kind of way ; and they have deviated so much as to render the works done very different from those of which they originally gave notice.

When a local authority has done private street works, no matter under which Act, it **can recover from the owner of any premises liable** his proportion, by action, as in the case of any other debt. It is the owner of the premises for the time being who is liable. Thus, if I have notice of a final apportionment in respect of works done in a street where I have property, and I sell that property to Jay, Jay is liable to be sued—not I. And if Jay sells to Kay, Kay becomes liable. In fact, he is liable who is the owner when the summons or writ is issued. Failing this method, the local authority may, by order, make the expenses of the work payable by instalments spread over thirty years, the premises being “charged” in the meantime.

One of the most perplexing problems for the property-owner in connection with a private street is this : **When I have once sewered, paved, etc., the street, am I bound to keep it in good repair?** Or, When I have, to the satisfaction of the urban authority, sewered, paved, etc., must the urban authority take it in hand for the future? The answer is twofold : Yes ! as to one part. No ! as to the other. The Acts which apply all give the urban authority power to request the property-owner to sewer, pave, etc., the private street, or to do it themselves, “where any [private] street or part thereof is not sewered, levelled, paved, metalled, flagged, channelled, made good and lighted to the satisfaction of the urban authority.” Observe the words “is not,” and “to the satisfaction of the urban authority.”

The question was fought out—I am not sure that it was finally fought out—in a case from Wales, heard before the late Lord Chief Justice Russell and Mr. Justice Charles in 1894 ; and they held that so long as a street was not a highway, or had not been “taken over,” so as to make it liable to be repaired by the public, so long could the urban authority continue to requisition the owners of the property in the street to keep it in repair.

This, however, *does not apply to sewerage* ; because as soon as ever a sewer is made in any sanitary district, it becomes vested in the local authority, which becomes responsible for it. But it *applies to all road-making and road-repairing and lighting* ; because, with the exception of the sewer, the road is a private street until it has been “taken over” by the local authority or has

become a "highway repairable by the public at large" in the way set out on p. 1615.

Unless, therefore, you desire your "private street" to remain private, you should see that it is **taken over by the local authority**. The taking over may be done either on the initiative of the local authority or (in some cases) on the initiative of the owners of the property in the street. The law differs in various urban districts, according as the authority has or has not adopted the Public Health Act, 1890, Part III., or the Private Streets' Works Act, 1892.

I. WHERE THE PRIVATE STREETS' WORKS ACT HAS BEEN ADOPTED by the Council for their district, the law is very simple. *First*, where all or any of the above-mentioned works (sewerage, paving, levelling, etc., *see 5th paragraph above*) have been done in a private street, the local authority may pass a resolution that it is desirable for that street to become a highway repairable by the inhabitants at large. Then a notice must be put up in the street declaring that the street is a highway repairable by the inhabitants at large, upon which it ceases to be a private street. Mind, the authority cannot take over the street until at least one of the works (*e.g.* kerbing, paving, sewerage, etc.) has been completed to the authority's satisfaction.

Second. Where in the private street the whole of the works above mentioned have been once done to the local authority's satisfaction, the majority (in value) of the property-owners in the street can present a notice to the authority requiring it to declare the street a highway repairable by the inhabitants at large. Within three months of the receipt of such a notice the local authority *must* put up a notification in the street declaring it to be such a highway. It then ceases to be a private street. If the local authority does not comply with the request of the property-owners, it can be compelled to do it by the High Court.

Note, please, that although the local authority may, of its own volition, take over a street when only one of the works has been done, it can only be compelled to do so when the street has been previously sewerage, levelled, paved, metalled, flagged, channelled, and made good, all to the satisfaction of the local authority. Note, also, that the "taking over" may be of some distinct part of a street—not a whole street necessarily.

II. WHERE THE ACT OF 1892 DOES NOT APPLY, but where the Public Health Act, 1890, Part III., has been adopted in the district, the law is that the street can only be "taken over" by the local authority on its own initiative. The property-owners in the street can, by a majority in value, prevent the street from being taken over and made a highway; but they cannot compel the local authority to take it over. The local authority may, by notice put up in the street (after one or more of the above works have been done to its satisfaction), declare the street a highway repairable by the inhabitants at large. If, however, within a month from the notice being posted, the majority (in value) of the property-owners in the street sign a written notice and serve it on the urban authority, saying, "We object to Blank Street becoming a highway repairable by the inhabitants at large," then the street remains private.

III. WHERE NEITHER THE ACT OF 1892 NOR THE ACT OF 1890 HAS BEEN ADOPTED in the district, the law is the same as in the last paragraph (II.), except that the local authority can only take over the street when *all* the works specified have been done to its satisfaction—that is, when it has been sewered, levelled, paved, metalled, flagged, channelled, and made good, and provided with proper means of lighting (*e.g.* gas-lamps with the gas laid on to them). The property-owners cannot compel the local authority to take over the street. Still, you know, there can be no harm in asking it.

IN SCOTLAND, as in England, the Town Council or Commissioners of a burgh have power to cause **private streets** to be properly made up—that is, to be levelled, paved, causewayed, flagged, and channelled, and obstructions to be removed from the roadway and footways. They have only this power when the private street has been one-fourth built up—that is, when houses or permanent buildings have been erected on one-fourth of the street frontage. If thought expedient, *any* private street may be temporarily made up—that is, all or any of the following work may be done :—

- (1) Carriage-way levelled and laid with road-metal or other suitable material ;
- (2) Lines of kerb to be laid ;
- (3) Channels or gutters made with gratings or gullies to carry off the water ;
- (4) Temporary footways or crossings formed of road-metal, gravel, etc.

These **temporary works** may be renewed from time to time, until such time as the Council think fit to make up the street permanently. They may also make up a street (with the consent of the owners of two-thirds of the frontage) with a macadamised carriage-way, and allow the owners to make up a gravel footway ; or they may insist on a permanent footway, kerb, etc. All work done by the Council to private streets is ultimately to be paid for by the frontagers on the street ; nevertheless, the Council have power to assess property-owners who have land and premises near the private street. The Council have also the powers of an English urban authority, under the Private Streets' Works Act (*see* pp. 1612-4), to make allowances to anyone who has paved, channelled, etc., any part of the private street ; and to apportion the cost not necessarily according to frontage, but according to other considerations of benefit received.

As to **public streets**, the Town Council may serve notice on the owners of premises or lands in the street to make a **foot-pavement**. This appears only to apply where, opposite and adjoining the land or premises, there is no foot-pavement in existence, or no satisfactory foot-pavement. In many small burghs, under the old *régime*, the pavements—or, rather, the absence of pavement—constituted something akin to a nuisance. The burgh authorities did not trouble about them ; and there was a difficulty, in many cases, in making the property-owners pave or pay. Now, however, the Council may notify any owner of lands or premises abutting on a public street, forthwith to pave the footway, on which his premises or lands abut,

with a pavement of a kind named, in a particular style, and of a particular breadth. This having once been done by the frontagers, the Council must thenceforth bear the expense of keeping the pavement in repair.

And should you happen to be owner of a bit of vacant ground—that is, not built upon, nor used as a garden, yard, or part of the amenities of a house or building—I will tell you what will happen. You need not pave your bit of the street, even if you are notified. You may if you like, of course. But if you do not, the Council will do it for you; charge you one-third of the expense now, and the other two-thirds when the vacant ground shall be fenced, built on, or used in some way as a garden, or pleasure ground, or “pertinent” of a house. “Pertinent” (which means “something appertaining”) is equivalent to the Frenchified English law-term “curtilage.”

I have already said that a Town Council (my remarks are still confined to Scottish burghs) can call on a property-owner to pave the footway in front of his own premises, after which the Council must keep it in repair. They have a further useful power: they can, by resolution of the Council, decide to take over the maintenance and repair of all the footways in the burgh. After the resolution is passed, they *shall* call upon all owners to make spick-and-span, and put in thorough repair, the footways before their own properties. If the call is not responded to within six weeks, the Corporation turns its own men on, and does the work at the owner's expense. Thereafter, the Council do all footway repairs in the burgh at the public charges (*except private streets*).

I have already told my readers about the “taking over” of private streets by an English authority. The Scottish municipalities have similar powers—similar, but not quite the same. I cannot help thinking that the Scots have the advantage of the Southron, in respect of a much simpler rule. It is this:—

- (a) If the Town Council have compelled the property-owners to put a private street into a thoroughly good condition [*i.e.* made, paved, causewayed, or flagged], or have done it themselves at the owner's expense; and one single property-owner whose premises front or abut thereon [*i.e.* the back of his premises may abut on the street, though the premises do not “front” on the street], applies for the street to be declared a public street, then the Council **must** declare the street a public street, and become responsible to maintain it in the future.
- (b) If the private street has been properly made, paved, etc., without any compulsion, any single owner, as in (a), may ask the Council to take it over, and the Council then **may**, if they think fit, do so.

I may say that “paved” means, or rather includes, asphaltting, wood-paving, tar-paving, artificial-stone paving, or any other kind of improved paving. “Paved to the satisfaction of the urban authority” includes not only the manner—that is, the workmanship of the pavior—it also has to do with the kind and quality of the pavement.

CHAPTER III.

PROPERTY-OWNERS AND DRAINS.

Difference between drain and sewer—Different law in different districts—"Drain" generally means one house only—Sometimes means otherwise—"Single private drain"—A legal puzzle—Houses belonging to different owners—When repairable by the property-owner—When by public authority—Open ditch or water-course—Local authority bound to construct sewers—Right to complain to Local Government Board—What sewers are private property?—Agricultural—Crown property—Sewers for private profit—What is profit?—The Minehead Case—Drainage of new houses—Houses rebuilt—Urban districts—Rural districts—Scottish burghs—Other places in Scotland—Power of local authority to order alterations—House not drained at all—Leave to connect with sewer—Manufacturers refuse—After drains are connected with sewer—Duty of local authority—Scottish burghs—House with sufficient drains, but unsuitable for locality—Alteration of system—Who must pay?—Power of local authority to open drains—Power to require owner to execute works—What works?—Consequences of disobedience—Drains which are a nuisance—Or injurious to health—London—Scottish burghs—Rural Scotland—Closing drains again—Permission of local surveyor.

IT is most important, in the first place, to discover the difference between a "drain" and a "sewer"; and, when you have discovered it, to bear it well in mind. I will first of all, then, try to make the distinction clear. The Public Health Act, 1875 (applying to ENGLAND), defines a "drain" as any drain which receives the drainage of one building only, or premises within the same curtilage. A sewer is that which receives the drainage of two or more buildings, or which receives drainage otherwise than from a building (*e.g.* the pipe that carries drainage from a field, or the overflow from a well or spring not within the "curtilage" of a building). This seems fairly simple.

But it is somewhat complicated by the fact that in districts where the Public Health Act, 1890, is in force (and that is any district which has adopted Part III. of that statute by resolution of the District or Town Council), a great deal of new law has been made to apply; the result of which new law is that nobody in the world knows what the new Act means. I will try to explain, as well as I can, premising that the judges have, though with difficulty, placed an interpretation on the statute, which must now be accepted as law.

Now every sewer is vested in the sanitary authority of the district, and is repairable by the sanitary authority, with the exception of three classes of sewers presently to be mentioned. Thus, where Part III. of the *Public Health Amendment Act, 1890*, has not been adopted in a district, every drain into which the refuse matter, etc., of more than one house falls is a sewer. For example, one Utley was the owner of three adjoining cottages, Nos. 105, 107, and 109, Fern Street, Halifax. When he erected the cottages, in 1868, his plans were passed by the Halifax Corporation. These plans showed a drain running through the centre of the basement of the

three cottages, for the purpose of carrying off the sewage and water-closet matter. In the cellar of each house was a slop-stone and water-closet, the water and refuse from which were carried by a pot-pipe into the drain, and thence into the public sewer in the street. A nuisance arose—a bad smell and an escape of bad gas—in the cellars of Nos. 105 and 107; and on examination it turned out that the basement drain under house No. 105 was defective. One of the pipes that should have joined the main drain had practically an open end, was not properly connected, and the drain had become choked. Thus the sewage and slop-water were forced back, and ultimately burst one of the pipes and allowed the filth to get into the soil beneath the basement. Naturally, obnoxious and unwholesome odours exuded.

The Halifax Corporation gave the owner of the cottages notice to abate the nuisance. He replied that the drain underneath the basements was a sewer, because the refuse from more than one house was conveyed into it. Therefore, he maintained, the proper people to put it in order were the Corporation—the local sanitary authority. On appeal, the High Court held that the drain under the basements of the three cottages was a sewer, and that the owner was not liable to repair it, or responsible for the nuisance it caused. I ought, perhaps, to say that a drain does not become a sewer until the point where the branch drain from the second house runs into it. Thus, if I build two houses, and start a drain-pipe from No. 1, and connect the soil-pipe of No. 2 with that drain-pipe, the pipe is a drain until the soil-pipe of No. 2 joins it. Thus I am liable to keep it in repair up to that point, and the local authority after that point.

Now let us see what difference would be made if the Halifax Corporation had adopted the *Public Health Amendment Act, 1890*. By s. 19 of the Amendment Act, where **two or more houses** belonging to different owners are **connected with a public sewer by a single private drain**, the owners of the houses served by the single private drain are responsible to keep it in repair. If they do not, the local authority can repair it and make them pay. And “for the purposes of this section, the expression ‘drain’ includes a drain used for the drainage of more than one building.”

Now it is very difficult to say what is “a single private drain”; and the difficulty soon arose in the Courts. The Act itself nowhere said what a “single private drain” was. It merely said that a drain should not become in all respects a sewer merely because it received the drainage from more houses than one. At last, after there had been considerable difference of opinion as to how the new Act was to be interpreted, a reading was put upon it by Lord Russell of Killowen and Mr. Justice Wills. The case came from Eastbourne, which had adopted Part III. of the Amendment Act. A Mr. Bradford had a house in Eastbourne, which was drained thus: Numbers 13, 11, 9, and 7, Pevensey Road, and Nos. 13 and 14, Little North Street, were drained by a pipe running along private property—i.e. with the grounds of these houses—until it reached the public sewer in a street called Susan’s Road. One of the above houses was Mr. Bradford’s; the others belonged to various other owners.

A nuisance having arisen by reason of the drain getting out of order, the Eastbourne Corporation gave notice to the owners; and then proceeded to take up the drain and mend it. They charged the expenses to the owners of the houses. Bradford's share was £2 7s. 2d. He refused to pay, on the ground that the drain, receiving, as it did, the refuse from a number of houses, was a sewer and not a drain. He was county-courted; lost there, and then appealed to the High Court.

Lord Russell gave judgment for the Corporation. He said that clearly some meaning must be assigned to the Act of 1890. It might not be easy to do it, but it had to be done. The new Act treated as "drains" some drains that were formerly "sewers," because formerly only a one-house drain was a "drain"; but by this statute "drain" included a drain used for more than one building. Now the new Act spoke of a *private* single drain, contrasting that with a *public* sewer. He thought these words must mean "a drain originally constructed for the drainage of one or more houses, as distinguished from a drain which any member of the public may have a right to use by connecting with it the drain from his own house." Such a private drain was an economical substitute for a separate drain from each of a row of houses to the sewer in the street; and evidently the legislature had meant to make the owner bound to keep it in good order just as he would have been bound to keep an ordinary drain (that is, a one-house drain) in order.

Applying this interpretation of the statute to the case under consideration, what do you find? You find a drain into which certain houses only are allowed to drain. Suppose a man higher up the street had demanded to connect the drain of his house with the pipe, he could not have enforced his demand. In that sense, therefore, the drain was a private one. Next, you find that the whole length of the drain, until it reaches the street, is on private ground, not in the public street. In that sense also, therefore, the drain was private. It was a single drain: it served more than one house: the houses belonged to different owners. Therefore, the Act could be interpreted to mean something not altogether absurd.

But although the New Act (1890), when adopted, casts certain liabilities on the owners of houses served by a "single private drain," it does not cast on such owners the full responsibility of repairing a "single private drain." The "single private drain" is, for all purposes, a sewer, except so far as the Act of 1890 says it is a drain. Now if that Act be read carefully, it will be seen that it **only applies where the "single private drain" is causing a nuisance.** Only in that case can the property-owners be made to repair it. But if no complaint is made about a nuisance arising from the drain, the local authority has no power to call on the property-owners to put it in repair.

Now it is quite obvious that the pipe (or conduit) may be out of repair but yet not be causing a nuisance or be injurious to health. If that is so, the local authority can be called upon to repair. For although the 1890 Act has made a "single private drain" a drain for one particular purpose, it remains

a sewer for every other purpose. Suppose you have a row of four houses, owned by four different owners, such houses having gardens, along which runs a pipe into which the drainage of all four houses runs. The pipe eventually empties itself into the public sewer in the street, carrying all the refuse of the four houses. The pipe begins to leak a little. If the leakage is such that it does not constitute a nuisance to the houses, or any of them, the local authority can be called upon to repair the pipe; because it is a sewer which they are bound to keep in repair. But if the leakage causes a nuisance to one or more of the houses, or to other houses in the neighbourhood, and somebody complains of this, the local authority may call upon the four property-owners to repair the pipe, because for this purpose it is a drain.

That this is the law seems clear from the cases that have been decided; but I have never been able to see any reason for it—other than that it is forced upon me by the construction of the Acts of Parliament.

If you carefully read the Halifax case (p. 1623), you will see from the facts stated that Mr. Utley could not have been made responsible for repairing the drain of his cottage-houses even if Halifax had adopted Part III. of the Amendment Act. True, the drain was, in both senses, a private one—that is, it was on private land, and the public had no right to use it. It was a single drain. It drained two or more houses. But—and here is the great absurdity of the the statute—the three houses did not belong to different owners.

So that where you have a row of six houses, three belonging to Jones and three to Brown, having a drain-pipe running along the front gardens, into which drain-pipe the six houses send their slops and refuse, and the drain runs into the public sewer in the street at the end of the row, the drain is a private drain, and must be kept in repair by Brown and Jones. But if the same circumstances prevail, except that all six houses are Brown's property, the drain is a sewer, and must be kept in repair by the local authority! Why the distinction was made I have not the slightest idea. Neither, I should imagine, has any other person. Suffice it to say that it is made, and is the law until it shall please Parliament to alter it.

I ought to warn my readers, perhaps, that many towns have Local Improvements Acts, and in many of these provision is made to cast on the owners of the houses the burden of repairing private drains that serve their several houses. And these private Acts, for the most part, make no distinction between a private drain serving the property of one man and a private drain serving the property of several house-owners.

I ought to say that when a local sanitary authority has mended a "private single drain" under the provisions of the Public Health Amendment Act, 1890, the borough or district surveyor first apportions the expenses amongst the property-owners. If any owner merely disputes the apportionment—that is, says "You have charged me more than my share"—the matter can be settled by two Justices of the Peace at Petty Sessions or by a stipendiary magistrate. But if the owner disputes altogether his liability to pay, the local authority will bring a civil action in the ordinary courts against him.

A sewer is not necessarily a thing of artificial construction; nor is it

necessarily a pipe or built-in conduit. The use defines it. And *an open ditch or water-course may be a sewer*; and if it is, and does not come within the exceptions given on p. 1628, it immediately vests in the local sanitary authority, and the authority becomes responsible to repair it and to see that it is kept free from any obstruction that would cause a nuisance, and generally to see that it does not become a nuisance. Thus, the Matlock Local Board were once declared to have vested in them a certain open water-course. Certain houses drained into a sewer, and the sewer was emptied into the water-course, which, in time, flowed into a brook. The South Shields Corporation had to take the responsibility of an open ditch into which the sewage of two or more houses was discharged.

The local authorities have power to acquire by purchase or gift any sewer, but if they do, all people who had the right to use the sewer when it was private property have their rights preserved absolutely intact.

The next thing to be noted is that the local authority is bound to keep sewers in repair (except the three classes named on p. 1628). The authority **must also construct in its district all sewers that may be necessary** for the drainage of the district. If a local authority absolutely refuses to make a necessary sewer, the Courts will compel it to do so; but if the authority fairly takes the matter into consideration, and honestly refuses to make a sewer because none is thought necessary, the property-owner ought to appeal to the Local Government Board—not to the Courts of Law. You—that is, any person aggrieved—have a right to complain to the L.G.B. in order to get the Public Health Acts enforced in your district. In “your district” I include a district where you have property that is injuriously affected by the slackness of the local authority.

The Public Health Act, 1875 (section 299), distinctly gives anybody **the right to complain to the L.G.B.** that some local sanitary authority is not enforcing any provision of the Public Health Acts, which it is its duty to enforce. Particularly you have a right to complain if the local authority refuses or neglects to provide sufficient sewer accommodation, or to maintain existing sewers in proper order.

If the Council's reply seems unsatisfactory, and it offers no redress, the L.G.B. may take the matter up. If they do, they will send down an inspector, who will hold an inquiry on the spot. You will be asked to attend, and to take with you all books, papers, etc., in proof of your complaint. You may also call witnesses, and cross-examine the witnesses who appear for the District Council. It is best to employ legal assistance, if you can afford it. If the inspector reports against the local authority, the L.G.B. make an order, and can either proceed in the Courts to enforce their order or can send somebody to do what the District Council ought to have done, and make the District Council pay the bill.

I have already said that every sewer in the sanitary district is vested in the local authority, with certain exceptions. Let us now consider the exceptions—that is, **what sewers are private property?** A very important matter, this, when you come to questions of liability to repair and to prevent the

sewer from being a nuisance. There are three kinds of sewers that are not vested in the local authority :—

- (i.) Sewers made for the purpose of draining, preserving, and **improving land** under the provisions of any local or private Act of Parliament, or for the purpose of irrigating land (whether under Act of Parliament or not).

As to this class, you get many Acts in various parts of the country enabling certain people to drain and improve or preserve land—their own and other people's. For example, the great drainage schemes in different parts of the fen country have, I believe, been mostly done by virtue of local and private Acts. Parliamentary sanction has generally been necessary because it has frequently been essential to carry the sewers by a certain particular route, through any land that might be in the way, and that whether the owners of the land were willing or not. Again, you have cases like this: A natural stream, supplied by the drainage (natural and artificial) of cultivated land, was, by a private Act, put into the hands of commissioners with power to widen it, deepen it, and generally improve it. The stream flowed into a public river, and on its way received the drainage of a few houses in Godmanchester. It was contended that the stream was a sewer, and that it was vested in the Godmanchester local authority—at least, that part of it which ran through Godmanchester—and therefore the local authority was liable to cleanse and repair it. But the Court said that even if the stream were a sewer, it was a sewer made for draining and improving land under the provisions of a private Act, and was, therefore, private.

- (ii.) Sewers made under the authority of any *Commissioners of Sewers appointed by the Crown.*

Sometimes the Crown (that is, the L.G.B.) appoints commissioners to deal with the drainage of a big district comprising several District Council areas.

Note well, that no local authority has any right to use or interfere with sewers of the above two classes.

- (iii.) Sewers made for any person **for his own profit**, or by any company for the profit of the shareholders.

This exception is one of those parts of the Public Health Acts that has given rise to a great deal of debate in the Courts. The terms of it are not very precise. It must obviously be limited in some way; because probably no man makes a sewer except for his own profit. Yet, obviously, the Act never meant to exclude from the “vesting” in the local authority every sewer made by a private individual or by a land and building company.

The question immediately arises, **What is profit?**—or, rather, When can a sewer be said to be constructed by a property-owner “for his own profit”? It was put forward, once or twice, that when a man made a sewer for the purpose of draining his own houses, but laid the sewer in a street that was

a private street, such a sewer ought to be considered to have been "made for his own profit."

In a case in 1893 such a contention was set up. It was sought to say that a sewer constructed by a land and building company, to carry off the sewage of its own houses, was not vested in the local authority ; and, therefore, that the land company was responsible to keep it in repair so as not to be a nuisance. Again the Court would not have it. Lord Justice A. L. Smith said he thought "own profit" meant some profit or advantage gained other than the advantage of having your houses properly drained. For example, if you have a sewage farm—that is, a farm which you manure by sewage—and you construct sewers to carry the sewage to your farm, they are sewers "made for your own profit." So that a sewer made for ordinary purposes of house drainage in the ordinary way, not being made for the profit of the man who makes it (within the meaning of the Act), is vested in the local authority, and must be maintained by it.

Not but that a sewer made for house drainage may not be one "**made for the profit**" of the constructor. For example, Mr. Luttrell was the lord of the manor and owner of practically all the land at Minehead. That place, now a flourishing seaside resort, was then a little village. The houses were owned some by Mr. Luttrell, who let them on short tenancies—yearly, three-yearly, and so on. Others had been constructed by persons who had leased the ground from Mr. Luttrell on long building leases, paying him a ground rent. One or two, I think, were the property (freehold) of people who paid a "perpetual fee-farm rent" to Mr. Luttrell. And one or two were the joint property of Mr. Luttrell and others. Thus, you see, the lord of the manor owned, more or less, all the houses in Minehead.

Wishing to improve his property, and also to add to his income, he carried out, at his own expense, a drainage scheme. He laid pipes, and constructed sewers underneath the streets, and connected all the houses with them. He built large tanks on his own land to receive the refuse. And by way of reaping the reward of his enlightened policy, he charged all the householders whose drainage he received into his sewers a yearly sum like a rate. These things were done in 1878.

In 1891, Minehead—now, thanks to Mr. Luttrell, a flourishing spot—became a local government district. And the new sanitary authority laid claim to all Mr. Luttrell's sewers as having become vested in them. But it was urged against them that these sewers had been constructed for the private profit of Mr. Luttrell. Not so, they replied. He only laid the sewers down in order to drain his own houses. The Court, however, declared the sewers to be private sewers, not vested in the local authority. True, they said, Mr. Luttrell had constructed the sewers to drain his own houses. But not for that alone. He had constructed them in order that he might put money into his pocket by selling the right to use the sewers to various people. That is, "for his own profit." Therefore the sewers were not vested in the local authority, but remained private.

In another case a man laid a row of pipes from a highway to a pond in

a field. His idea was to drain some of the surface water of the road into his pond, and so keep up a good supply for his cattle. It was decided that this was a sewer constructed for his own profit. In yet another case a quarry-owner laid pipes to carry off the water from his stone quarries so as to prevent the workings from being flooded. The Cleckheaton District Council said this pipe was a sewer vested in them; but the Court of Appeal again held that the sewer was one made for private profit—that is, one for the profit of the quarry-owner in his way of business, and not one for the ordinary purpose of carrying off refuse.

To sum the matter up, one may quote the words of Lord Lopes, then a Lord Justice: “A sewer for profit means, in my opinion, not a sewer made for the mere purpose of discharging matter not in any way to be utilised but which it is essential to get rid of for sanitary purposes, but a sewer made for the purpose of realising a profit, **above and beyond, and independent of, any sanitary purpose**—such, for instance, as a sewer made to collect feculent matter with a view of utilising it for manure, or a sewer made for the purpose of carrying away surface and other water and using it for irrigation.”

Let me first consider the question of the **drainage of new houses**. The same rules apply to **houses rebuilt**. And I will consider the law as it applies to England (urban and rural) and to Scotland (burghs and places outside burghs).

IN URBAN DISTRICTS (ENGLAND) it is unlawful to erect a new house without proper drains. And it is equally unlawful to rebuild a house that has been pulled down as far as the ground floor without proper drains. As to **what drains are proper** depends a great deal on the bye-laws of your district. But whatever the bye-laws may be, there are some points upon which the law is the same in all urban districts. To begin with, you must not begin to build (or rebuild) unless and until you have constructed your proper drains. In the second place, your drains are not proper unless they are covered drains. In the third place, they are not proper unless they have been made to the satisfaction of the borough or district surveyor as to materials, size, level, fall, and construction. In the fourth place, they must empty into a sewer belonging to the urban authority, if there be one within 100 feet of the site of the building; and if there be no such sewer within 100 feet, then they must drain into a cesspool placed anywhere (except under a house) that the urban authority chooses. The penalty for breach of any of the above rules is a fine which may amount to as much as £50.

The Council usually has an elaborate set of bye-laws prescribing, with more or less minuteness, the size, kind, fall, kind of material, and so on. These bye-laws also require—invariably, I believe—certain notices to be given. For instance, every drain must be laid on a floor of cement so many inches thick; and you must give notice to the surveyor when the bed is made; and he must inspect it within four days, before you can proceed. Again, you must give notice to the surveyor before you cover up the drain; also before you begin to dig up any part of the street, and so on. You should, if you

intend to build in any district, take care to procure a copy of these bye-laws. Be sure to observe them strictly. And remember that even if you persuade the surveyor to consent to something contrary to the bye-laws, his consent is not worth a rap, and will not protect you if trouble should afterwards arise. The penalty for breach of a bye-law cannot be more than £5 for an offence, with 40s. a day for every day the offence continues after notice from the urban authority.

Occasionally, in some matters, the bye-laws themselves give power to the Council or to the surveyor to exercise a discretion—*e.g.* “All drains of dwelling-houses shall be of a diameter of at least twenty-four inches, **or such other diameter as the Council may permit.**” But with regard to the four matters alluded to in the last-paragraph-but-one (p. 1630), no Council or surveyor has any discretion at all, or any power to accept less or demand more.

In RURAL DISTRICTS (ENGLAND), the Rural District Council may have adopted (or may have had imposed upon it by the Local Government Board) section 23 of the Public Health Act, 1890. In either case, such a Rural District Council may make bye-laws as to drainage of new buildings, just as an urban sanitary authority may, and may compel building owners to submit plans before beginning building; prescribe that every new house must be drained in a certain fashion; that the drains must be inspected before being covered in, and so forth. As to penalties for breach of bye-laws, *see* above, p. 1630.

In rural districts where the powers above mentioned have not been adopted or imposed (unless, by chance, the Council has urban powers—in which case it is, for all practical purposes, an urban district), the Rural District Council cannot make bye-laws as to the drainage of new houses. All the Council can do is to wait until a house is actually up, and then treat it as an old house. On p. 1632 I tell you what can be done in respect of old—*i.e.* existing—houses that have no satisfactory drains.

The law as to drainage of new houses in BURGHS (SCOTLAND) is much the same as the law applicable to English urban districts—to wit, no house or building may be built without a proper drain. Nor may any house or building that has been demolished to the ground (street) floor be rebuilt without a proper drain. There is one preliminary—the building owner must build upon a level which will allow a proper drain to be made. By “proper” drain, I mean a drain that will fall into a public sewer belonging to the Council.

In England the making of the drain from site to public sewer is left to the builder. In Scotland, not. It is the public authority that makes the branch drain from the site to the public sewer—a highly laudable provision. Why it does not prevail in England I do not know. This branch drain must be connected with a public sewer if there is one within 100 yards of the site. Otherwise it must lead into a cesspool.

Pray do not imagine that because the Scottish Town Councils construct branch drains for new houses that the property-owners escape all burdens in respect of drain-making. Far from it. The whole expense must be borne by

the property-owner and his property as a private improvement expense (*see* Chap. VII.). The penalty for breach of the above law—that is, for building or rebuilding without a drain—is a fine not exceeding £5.

IN PLACES OTHER THAN BURGHS (SCOTLAND), drainage bye-laws may be made by the local sanitary authority (District Committee), subject to the approval of the County Council. What these are, I fear everybody must ascertain for himself by application to the clerk to the committee of his own district. The penalties for breach of a bye-law cannot exceed £5.

I deal elsewhere with the fate that befalls him who makes a drain and connects it with a public sewer without the permission of the local authority, in whom the sewer is vested (*see* p. 1623).

I have frequently been consulted by property-owners as to **the power of the local authority to order drains to be altered**. Have local authorities such power? Can they give notice to a property-owner to put in new drains? or to substitute new drains for old? And the answer is, that they can, under certain circumstances, do these things. What those circumstances are, I will proceed to narrate.

First, let us consider the case of a **house not drained at all**; or, what is much the same, a house without a sufficient and effectual drain. In such a case, the local authority has power to call upon *either the owner or the occupier* to make a proper drain. The power is not to call on him to make any sort of drain it pleases, but one that will meet the requirements of local bye-laws, if there are any. The local bye-laws can regulate certain things as to the size of drains, manner of connection with the public sewer, kind of joints to be used, and so on; but the bye-laws cannot go beyond the following requirements:—

- (a) The local authority must give written notice of what it is it requires.
- (b) The notice must name a reasonable time within which the drain is to be constructed.
- (c) The drain required must be a covered drain (or drains).
- (d) If there is a sewer which the local authority has the right to use within 100 feet of the site of the house, the authority must require the drain to be connected with the sewer.
- (e) If there is no such sewer, then the authority must demand that the drain shall empty into a cesspool (covered) or other place; and the cesspool or other place must be made or situated wherever the local authority points out, but must not be underneath any house. If the owner or occupier of the house does not execute the work he is notified to execute, the local authority may do it for him and charge him with the expense—either suing him then and there for the money, or declaring it a private improvement expense (*see* Chap. VII.).

It may happen, however, that the authorities think it would be cheaper to make a new sewer than to compel the owner or occupier of the house to run his drain into an existing one. They can do this if there are **two or**

more houses in question, but not if there is only one. And if they do it, they may compel the owners or occupiers of the houses to connect their drains with the new sewer, and may charge the owners of the houses with the cost of constructing the new sewer. The proportions in which the houses are to pay is to be settled by the district (or borough) surveyor; and the amount may be recovered by a summons before a magistrate. Or the Council (or the local authority) may, by resolution, declare the amount to be private improvement expenses. (As to the payment of such expenses, *see pp. 1669-75.*)

IN SCOTLAND, in sanitary districts other than burghs, the law is precisely the same as above. The wording of the Scottish Public Health Act differs from the English Act in one respect—the English Act speaks of “house,” the Scottish Act says “house, distillery, factory, or other work.” But the effect is much the same; because the word “house,” as used in the English Act, includes factories and other buildings in which persons are employed.

It ought to be said that both in SCOTLAND and in ENGLAND you may have your drains running into the sewers of a district other than the one your property is in, provided you can make proper terms with the authority owning those sewers. For instance, you may live on the outskirts of a borough that is thoroughly sewered—as if you happen to live just over the boundary-line of a great town like Manchester or Dundee. Your house is in some rural district, nominally, and the nearest house to yours in that district is a mile away. The Rural District Council (or District Committee) hardly find it worth while to extend their sewers to within 100 yards of your premises. On the other hand, the sewers of the great town are within 50 yards of your back door. It will be much better for you to strike a bargain with the Manchester or Dundee Council to pay them a small sum of money to be allowed to connect your drain with their sewer than to be compelled—as you can be—to make a cesspool to receive your drainage—a cesspool, mind, that it is your business to keep clean and prevent from becoming a nuisance to anybody.

But be careful not to take French leave. Do not connect your drain with the sewer of another district without first getting leave. If you do, the worthy councillors of that place may order your drain to be cut off, and may prosecute you. The fine may come to £5 in Scotland and £20 in England. You must not even connect your drain with the sewer of your own district without first giving written notice to the Council (or committee) as required by the Council's bye-laws. No! not even if you are a ratepayer of forty years' standing. Such an act renders you liable to a fine of £5 in Scotland, or £20 in England, and £50 in London. When making the connection, be especially careful to observe the local regulations as to the mode of communication. Most Councils and Committees require all such connections to be made under the superintendence of some employee of their own; and such a requirement is quite lawful and right. Besides the fines above mentioned, the local authority may summarily and without warning cut off any drains connected with its sewers if the local rules have not been complied with. Moreover, it may make you pay for the cutting-off.

IN SCOTLAND, in the burghs, the law is not much different from the law of England on the subject of drainage and sewerage. Every Council is bound to have a map showing the course of all sewers and drains belonging to them, with levels thereof. Except

- (1) Private branch drains ;
- (2) Drains made for the purpose of draining, preserving, and improving land (same as in England) ;
- (3) Sewers made under the authority of a local or private Act of Parliament (same as in England) ;
- (4) Sewers made for irrigating land (same as in England)

All other sewers and drains within the area of the burgh are vested in and belong to, and are under the management of the Commissioners or Council. The Council must from time to time cause to be made, under the streets or elsewhere, main and other sewers sufficient for the drainage of the burgh. They may lead their pipes through and across underground cellars and vaults that are under any street, making compensation for damage done. They may lead them also through or into inclosed or private lands, making compensation to the owners and occupiers of the land. Twenty-eight days before making a new sewer, or altering the course of a sewer, or abandoning or stopping a sewer, the Corporation must put up a notice at each end of any street where such work is to be done, giving notice of what is to be done. Any person who objects has a right to be heard by the Council.

Manufacturers' refuse cannot be emptied into the sewers, ditches, rivers, and burns of rural SCOTLAND unless the owners of the "distillery, manufactory, or other works" has, as far as possible, rendered it inoffensive and innocuous beforehand. Distillers, manufacturers, etc., must get rid of their own rubbish. The local authority may, for a consideration, undertake to deal with trade refuse of this kind, but must take care not to choke their sewers or render them a nuisance or injurious to health. In ENGLAND it is rather different. The local authority must give facilities for disposing of refuse.

After your drains are connected with a public sewer, you have a vested right and interest in the connection. You cannot afterwards be told that you must connect with another, different sewer. I do not for a moment mean that under no circumstances can your drain be disconnected. Not at all. Local sanitary authorities in all parts of the kingdom have the right to relay their sewers ; to discontinue one sewer or one whole set of sewers ; to start a fresh scheme entirely ; to make their sewers fall northward instead of southward, and so on

But if your drain (or private sewer) is connected with a sewer belonging to the local authority, that authority must, if it discontinues, closes up, or alters the sewer so as to deprive you of the use of it, promptly supply you with another into which to drain. And it must make all necessary alterations at its own expense. Further, it must not cause any nuisance to you, or to the public, while making the alterations

The law is the same, in this respect, in ENGLAND AND SCOTLAND ; but in

Scottish BURGHS there is a rather neat method of enforcing the law and of compensating any person aggrieved. Suppose a man is deprived by the Council of the use of a drain or sewer which he was lawfully entitled to use, he is, as I have said, entitled to another in its stead. So he serves on the Council a notice, requiring them, within seven days, to begin and diligently thenceforth to proceed with the work of making him a new sewer or drain in place of the one he has been deprived of. And if the Council does not begin within seven days, it must pay 40s. a day to the aggrieved citizen. Moreover, if, after having begun, it does not **diligently** proceed with the job, it must pay to the aggrieved citizen 40s. a day for every day during which its workmen were not diligently proceeding. And the aggrieved citizen may proceed before the sheriff against the Council to "lift" the various fines he is entitled to.

Blessings on the man who drafted the Burgh Police Act, 1892, if only for this twinkle of humour! Imagine, ye Londoners, the spectacle of Corporation labourers "proceeding with due diligence"! I remember with tears how, when the road was torn up in my street on the last occasion, the workmen proceeded with the utmost diligence to smoke numbers of pipes and drink infinite cans of something—cold tea, probably—most of the time between meals. Are Scottish Corporation workmen so very different, I wonder?

Sometimes you have the case of **a house with sufficient drains, but not suitable** for the locality. By which I mean that the drains of the house are sufficient for the drainage of the house itself, but do not fit in with the general scheme of the district. This can hardly happen unless the drains were constructed a very long time ago, before the modern Public Health Acts; for since these were made, in all urban districts and some rural ones, the local authority will have insisted on suitable drains when such drains were constructed.

IN ENGLAND, a local authority desiring to make any alteration with respect to such a drain—*i.e.* a drain sufficient for the drainage of the house, but otherwise unsuitable—may make the alteration; and for that purpose may, upon proper notice to the occupier, enter any land or premises. They may do **all necessary works at their own expense**; and they must do such works so as to cause as little damage as possible.

IN SCOTLAND, there appears to be no power, except in burghs, to do anything where the drains are "sufficient." But IN BURGHS the local authority has larger powers. There is no express power given to the burgh corporation or commissioners to reconstruct drains where the drains themselves are sufficient. But the Burgh Police Act, 1892, says that where, *at any time*, houses are not supplied with sufficient drains to the satisfaction of the local authority, the local authority may step in and make such sufficient drains at the property-owner's cost. On the other hand, by another section, if a man has sufficient drains communicating with the sea or with a public sewer, that man has apparently fulfilled the requirements of the law. But, the Act says, all branch drains, cesspools, or reservoirs for sewage are under the control of the local authority, and may be *reconstructed and altered*, as

well as repaired, at the expense of the owner of the houses served by such drains, cesspools, and reservoirs.

This brings me to the subject of **the powers of local authorities to open up drains**, which vary a great deal in England and Scotland. I am not now dealing with the power to uncover drains newly made, and covered up by the building before the district surveyor has inspected them. I am dealing with the power to open up and inspect drains already made, and passed lawfully when they were made. IN ENGLAND, excepting London, the law stands thus:—On the written application of any person to the local authority, stating that any drain* or cesspool on or belonging to any premises is a nuisance or injurious to health, the local authority may act—not otherwise. On receipt of such an application, the local authority, or the proper committee thereof, must meet, and give the surveyor or an inspector authority (in writing) to enter the premises where the nuisance is alleged to be. The authorisation ought to state whether or not the inspector is to take assistance and workmen with him. It nearly always does give this power.

The officer may, in cases of emergency, be authorised to enter the premises at once without notice. But if he is not expressly told to do this, he must **give the occupier twenty-four hours' notice** in writing. Then, armed with his written authorisation, the inspector or surveyor may go in and possess the land. Those of you who have ever had a visit from the sanitary gentleman and his myrmidons, know with what spirit they enter into the undertaking. They come in—a gentleman answering to the name of Bill waves a pick—and right heartily the gang begin to delve for the drains. You soon know they have arrived: you would be rash if you ventured to prophesy when they will depart.

Yet they have a legal right to dig up your walks and your garden—a statutory right—and if you deny them admittance for the purpose, a magistrate's order will “bring you up with a round turn,” as the sailors say. And if Bill and his mates, during the short intervals between the smoking of black and horrible tobacco, the chewing of quids, the quenching of thirst, and the appeasing of tremendous appetites, find a drain with something wrong in it, the local authority will serve upon owner or occupier (whichever they please) notice to “execute necessary works” to put the matter right. And if the owner or occupier, whoever may be served, does not promptly comply with the notice, Bill and his mates will probably reappear, and proceed to “execute such necessary works.” Great are the works of Bill! And the person who neglected to comply with the notice is also liable to a fine of 10s. a day for such time as he ought to have been engaged in the necessary works and was not.

I am not concerned here with questions between owner and occupier. The occupier is, at the Common Law, the person liable to prevent the house-drains from being a nuisance. The only time when a non-occupying owner could be hit was when he had constructed the drains in such a manner as

* The same with regard to any water-closet, privy, earth-closet, or ashpit.

to be a potential nuisance and then let the house. Whether the landlord or the tenant is liable depends entirely on the tenancy agreement or lease. The local authority has nothing to do with that. All it cares about is to have the nuisance abated, and that forthwith. So it serves notice on the owner if it thinks he is more substantial than the occupier, and likely to do the work quicker; or *vice versâ*.

Suppose you, the owner, have to "execute the necessary works," be careful. You must **execute them as demanded by the local authority**. By which I understand myself to mean, that if the Corporation surveyor says you are to do $a + b$ you must not do $a - b$, still less $x + y$. The surveyor or other officer of the local authority must be permitted to inspect the work; and you must **on no account** cover up the drain again without giving the notice required by the local bye-laws. If you do, you will probably once more see Bill and his mates, who will cheerfully dig the whole lot up again—at your expense. If the surveyor reports, and the local authority decides that you have not "executed the necessary works" properly, or have not used proper materials, they may either give you a chance to do it again, or may themselves execute the necessary works at your expense. Expenses incurred under this heading may be either demanded of you at once, or you may be summoned before a magistrate for not paying, or the local authority may declare the amount to be a private improvement expense (as to which, *see* p. 1669).

"**Nuisance, or injurious to health**" means not "nuisance to health or injurious to health." A drain, cesspool, etc., may be opened up and repaired as above when it does not tend to the injury of anybody's health. For example, you may have a drain whence proceeds an unpleasant smell. If the smell arises because of some noxious gas escaping from the sewer, some gas which, if inhaled, will probably cause the inhaler to have fever, or diphtheria, or some other illness, the drain is injurious to health, and the local authority may take the steps above described. But the smell may be merely unpleasant. It may not be injurious to the health of any person inhaling it—merely so pungent and nasty as to interfere with the enjoyment of life by the occupier of the property, or by the occupiers of neighbouring property. In that case the local authority can also, on complaint being made, take the steps above described.

IN LONDON, the local authority—in this case the Borough Council—has the right to inspect and open up drains. If the drains are found to be in good order, the local authority must cover the drains again at its own cost. But if the drains are found to be in such a state as to be a nuisance, or injurious to health, then a notice to put them right is given to the person who is liable to do the work—the owner or occupier. If such person, on receipt of the notice, does not execute the necessary works within the time specified by the notice, the local authority may take one of two courses: they may proceed against him in the nearest police court, and have him fined (maximum £10), and if he does not then execute the works they may summon him again, and have him fined again; or they may go in and do

the work themselves and make him pay for it. The person liable may be the owner or it may be the occupier—this depends on whether or not the occupier holds the house under an agreement binding him to do repairs.

The two differences between London and the rest of England are: (1) In London the local authority may act on its own initiative; in the rest of England, only on a written complaint being made. (2) In London, the notice must be served on the person liable in law to repair the drains; in the rest of England either owner or occupier can be notified, at the option of the local authority. Notice of intention to open drains must be given as in the rest of England—*i.e.* twenty-four hours' notice to the occupier, except in cases of emergency.

IN SCOTLAND the law in burghs is very wide. The burgh surveyor *may* open up any drain he pleases. If the Medical Officer of Health or a sanitary inspector requests him to open up the drains of a particular house or piece of land, he *must* open them up. If these drains are found good, then they must be covered and made good again at the expense of the burgh authorities. If they are found bad, the surveyor causes them to be made good, and the owner or occupier must pay the bill.

In rural Scotland—that is, in places outside of burghs—there are no such peremptory powers vested in the local authority. If a drain is suspect, and the owner thereof will not voluntarily open it up, the local authority may apply to the sheriff for powers to do it themselves; and the sheriff will appoint a day for the owner and occupier to come and show cause why the drains should not be opened up for inspection. If the sheriff sees fit to order them to be opened up, they are opened up by the local authority; and if found wrong, are to be made good at the expense of the owner of the drains.

I need hardly say that the owner of a drain, or the occupier of the land in which it is, may (both in Scotland and England) lay bare the drain at any time, and repair it if he thinks proper.

But when a drain has been opened up for repairs it should not be **closed again without being first inspected by the local surveyor**. In England and in rural Scotland the bye-laws deal with this matter, as a rule. It is generally provided that certain notice shall be given to the surveyor of the local authority, who must then inspect within so many days or hours. In the Scottish burghs, by statute, twenty-four hours' written notice must be given to the local authority or to the local surveyor. The surveyor may then inspect and test the drains, and approve them or otherwise. There is a penalty of £5 for covering up drains without due notice. The penalty extends to the builder and the agent of the property-owner as well as to the property-owner himself.

CHAPTER IV.

PARTY WALLS AND FENCES.

Ordinary party wall—Common ownership—Common owners have right to the whole wall each—One owner cannot prevent other from full use—Ousting the other owner—Is trespass—Neither owner may take exclusive possession—May pull down with intent to rebuild—Must rebuild substantially the same—Wall divided into two strips—Each party entitled to part on his own land—Where capable of exact proof—Presumption of common ownership—How rebutted—Where wall not common neither party may pull down—May pull down own half—The danger of using a pickaxe—Where the wall belongs to one owner—Other owner has right to use—Must pay for this right—An instance—Party wall built on two owners' lands—The right to lean—Caution to people about to build—An expensive present—Semi-detached houses—The party wall—Where both houses originally in same ownership—Sale of one house—Mutual rights of support—Pulling down party walls—The right varies according to kind of wall—Where right exists to pull down half—Demolition must not be negligent—Where mutual rights of support—Who repairs party walls?—Difference between right and duty—No one compelled to mend common wall—Wall may be partitioned—The London code.

FEW, if any, subjects concerned with rights of property have been more fully litigated than the party wall. The structure in question seems to call forth all that is litigious in human nature. A man will suffer many things without proceeding to the extremity of an action-at-law. But touch his party wall and he will breathe out writs and lawyers' letters. My London readers will find the law applicable to party walls in London later in the chapter. We will deal with the general question first.

The most ordinary kind of party wall is one which is built between two properties, partly on the land belonging to one owner, and partly on the land belonging to the other. In such a case, the owners of the soil upon which the wall is built may be either owners of the wall in parts or tenants in common of the structure. And **common ownership** amounts to this, that each is owner of an undivided half of the wall—that is to say, each one has the right to the use and enjoyment of the whole wall. He is not confined to the use of that share of it which is actually erected on his land. Suppose a wall built to divide two gardens—the said gardens belonging to Brown and Green. The wall is twelve inches thick. It is on six inches of Brown's garden and six inches of Green's garden, and is owned in common by the two.

Brown cannot cut it down the middle and say that he is entitled to the exclusive use of the six inches on his ground. Green cannot do anything to the wall which would disable Brown from using it. There was a rather amusing case a good many years ago which exactly illustrates what I mean. Two people called Stedman and Smith occupied adjoining pieces of land divided from one another by a party wall. Smith, on his side of the fence,

had for many years had a stable, the roof of which rested on the wall and occupied the whole width of the top of the wall so far as it was contiguous thereto. In the year 1855 Smith took off some coping-stones which were on the top of the wall. He raised the wall and replaced the coping-stones, though not in exactly the same place. He pulled down the stable and built a wash-house, the roof of which occupied the whole width of the top of the wall along the whole length of the wall. To add insult to injury, he put a stone in the wall on which he had carved the inscription as follows: "This wall, and ground on which it stands, belongs to Mr. Smith, 1856."

Stedman promptly brought an action for trespass against Smith; and the judges finally decided that Smith had done more than he had the right to do, and was responsible for the trespass. In the first place, he had replaced the coping-stones not in their original position. In the second place, he had covered the whole of the top of the wall with the roof of his new wash-house, so that Stedman, the joint owner, was unable to use the top at all. As Mr. Justice Crompton said, "He might have wanted to train fruit trees there, or to amuse himself by running along the top of the wall." The same learned judge said that if the defendant's contention was right, he might have covered the whole of the top of the wall with broken glass so as to prevent the plaintiff from using it.

Now it is the law that **one tenant in common cannot take to himself the exclusive possession** of the common property in such a way as to exclude or oust the other joint owner from using it equally with himself. Suppose, for instance, you and I buy a field as tenants in common. You can turn into that field as many cattle as you like, or go in it and lay it out as a cricket-pitch; but you cannot keep me out, nor prevent me from playing on the pitch.

It is exactly the same with a party wall. There was nothing in this case to prevent Mr. Smith from **pulling the wall down with intent to rebuild it**. But he must intend to do this, otherwise he has no right to pull it down; and he must rebuild it in substantially the same condition. For example, if there is an ordinary garden wall of the thickness of, say, nine inches, he must not rebuild it eighteen inches thick and take up any more inches of your land so as to have it half and half.

The second kind of party wall is a wall divided into two strips down the middle, each strip belonging to one of the adjoining owners. This happens when a wall is erected partly on the land of one person and partly on his neighbour's land, each contributing to the expense of the building. Unless in such circumstances the persons agree that it shall be a wall owned in common, it is not owned in common. It is, in effect, just the same as two separate walls built side by side. But I ought to add that when you find a party wall built part of it on one man's land and part on the other, you must always **presume that it belongs to them in common**. That is the first presumption; and it is for the man who says that the wall is not held in common, but that the two halves of it are held separately, to prove it. If neither party can prove how the wall came to

AGREEMENT AS TO A PARTY WALL.

This Indenture



made the twelfth day of April
One thousand nine hundred and
two **Between** William

JONES of 11, Old Street Stragley, in the County of Warwick
Esq. Merchant of the one part and Alfred Ambler of
18, New Street Stragley aforesaid Builder of the other part

Whereas the said William Jones is the Owner in fee simple
of the messuage and premises N^o 11, Old Street aforesaid **And**
whereas the said Alfred Ambler has recently purchased
a plot of ground adjoining thereto and on the East side thereof
and is desirous of building a dwelling house intended to be
Numbered 11, Old Street on such plot of ground and the
said Alfred Ambler has applied to the said William Jones for
permission to build such dwellinghouse on the East wall of the
said messuage Number 11, Old Street so that the said East

wall may be and become a party wall **Now this**
Indenture witnesseth that in consideration of the
sum of Forty pounds by the said Alfred Ambler
paid to the said William Jones (the receipt whereof the
said William Jones doth hereby acknowledge) The said
William Jones as benevolent Owner hereby grants to
the said Alfred Ambler **The right** for the said Alfred
Ambler to build a dwelling house abutting on the said East
wall so that the same may become a party wall common
to the said proposed dwellinghouse and to the premises Number
11, Old Street aforesaid **And** to that end to use the said East
Wall and to place thereon all necessary beams and timbers for
the support of the roof of the proposed dwellinghouse and to
make all necessary additions and alterations to the said
East wall **Provided** that the said Alfred Ambler shall

at his own expense strengthen the said East wall sufficiently
to enable it to bear any extra weight imposed upon it by
reason of his user thereof **And it is** hereby agreed
that if at any time the said East wall shall require to be
repaired the expenses of such repairs shall be borne and paid
equally by the parties hereto or their respective heirs executors
administrators and assigns being the Owners in fee simple

of the said messuage Number 14 Old Street and the said
intended dwellinghouse Number 16 Old Street. And
further that any disputes which may arise as to the
construction of these presents or as to the rights and liabilities
of the parties or their respective heirs executors administrators
and assigns hereunder shall be determined by a single
arbitrator appointed in manner provided by the Arbitration
Act 1889 **In witness** whereof the said parties to
these presents have hereunto set their hands and seals
the day and year first herebefore written

Signed Sealed and Delivered
by the said William Jones in the
presence of } William Jones

Arthur Brown

12 Love Lane, Tulse Hill

Builder's Clerk

Signed Sealed and Delivered
by the said Alfred Ambler in the
presence of } ~~Alfred Ambler~~

Thomas Robinson

15 The Lane, Tulse Hill

Architect

be erected, or what was the agreement made between the parties when they erected it, then it is to be taken for granted that it is common property, and is therefore not divisible into halves.

When, however, you have a clear case of a party wall which is divided down the middle by an imaginary line running along the whole length of it, you have a very curious state of things. Suppose, in such a case, one of the owners **wants to repair** his wall, and in order to do that pulls the whole party wall down. He has done what he has no right to do, and he is liable for trespass so far as regards the half of the wall which belonged to his neighbour.

There was a case decided nearly a hundred years ago, where two people owned a party wall. It had been built by agreement at the joint expense of the pair of them, and half of it stood on the land of Mr. Matts, and the other half on the land of Mr. Hawkins—these were the names of the contending parties. One fine day Matts raised the wall higher than it had formerly stood; of course, he had no right to do that. He had a perfect right to build on the half of the wall which belonged to him. But he had no right to build on Hawkins' half. But if Matts was in the wrong when he built, Hawkins soon put himself still more in the wrong. With that species of madness that possesses people who imagine their party wall is about to go from them, he took unto himself a pickaxe and knocked down the new part of the structure. Now pickaxes between neighbours are really improper. Matts made no more ado, but he caused his attorney to present Hawkins with a writ claiming damages for trespass. Hawkins replied that the party wall belonged to him in common with Matts, and therefore that the addition thereto also belonged to him in common with Matts. "And," said he, "I have as much right to demolish the addition and restore the wall to its former state as the other man had to put it there." It was true enough if Mr. Hawkins' premise had been sound—that is, if it had been a fact that the wall was common property; but, as I have said, it was not common property. And, therefore, it was held that Mr. Hawkins had committed a trespass by knocking down such part of the addition as stood on that half of the original wall which belonged to his neighbour.

The third kind of party wall is a wall which really belongs to one of two houses, but it is used as the wall of the second house, the owner of the second house having the right so to use it. That right, I need hardly say, he must acquire by some lawful means. He must purchase the right, or have it given to him, before he can use another man's wall for the wall of his own house.

The kind of thing I mean is this:—Brown has a piece of building-land divided into six plots running side by side. The character of building operations will most probably be this: Brown builds one of the corner houses. Then let me say he builds one adjoining it, and lets it to Robinson. One end of Robinson's house is formed by the wall which belongs to Brown's house. Then Robinson purchases his house from Brown. Smith comes along next, and buys plot number three, the one next-door to Robinson. Smith

begins to build. He intends to use the end wall of Robinson's house as the wall of his house—in fact, to make it a party wall. Can he do this? That is a question important both to Smith and Robinson. It is very important to Smith, because if he cannot use Robinson's wall as a party wall, he must either build a wall of his own, which will take up space as well as cost money, or he must pay Robinson for the right to make use of his wall. The answer is that Smith has **no right to use the wall, except by the permission** of Robinson. I need hardly say that Brown, the original owner of the land, if he was well advised, will have made some stipulation with Robinson that Robinson shall allow his wall to be used by the assign of the next-door plot.

To continue with the same instance. Suppose that Brown was not well advised, and did not insert in his conveyance to Robinson the clause I have suggested. Suppose, that is to say, that Robinson is the sole and undisputed master of that wall. Now the said Robinson will probably have built, sticking out from his wall, certain projections and so on, with a view to making the wall a party wall when the next house shall be built—providing, of course, that proper payments shall be made by his neighbour. In the case as it stands, the wall of Robinson's house will naturally be built right on the boundary-line—or, rather, right up to it. Hence, if Robinson causes any projections to be built on that wall, the projections will extend over the boundary-line into the plot that afterwards becomes Smith's. Can the worthy Smith take advantage of this fact to (for instance) raise the roof of his house on the projections? The answer is that he cannot.

Yet **a fourth kind** of party wall. This is the kind of wall very like the wall belonging to Messrs. Matts and Hawkins. It is a **wall built on land partly belonging to one person and partly belonging to the other**. It is divided by an imaginary line down the middle. But it differs from the other in the fact that each half of the wall has the **RIGHT TO LEAN** against the other half. That is to say, each owner has the right of support for his half from the half belonging to the other owner.

I want to address a few words of caution **to people about to build** party walls. Do not build on another man's wall. If you do, and you either do it knowing that you have no right, or do it quite innocently without any right, or even obtain permission to build, you make the owner of the wall a present of what you build. This depends on the old doctrine of law that what is put into another man's soil, or so joined to it that you cannot take it away without disturbing the soil, belongs to the man in whose soil you placed it. And as, in the eye of the law, a wall is part of the land, it follows that if you fix something to the wall, you have fixed it to the land and made it part of the land.

An instance of the fourth kind of party wall—in fact, the most usual instance—is to be found where you have two houses separated by a party wall belonging to the same owner. Suppose Macpherson owns two adjoining houses, Nos. 1 and 2, Noble Street, Little Peddlington. The houses were built together in the form known as **semi-detached**. Thus the wall

dividing the two houses, which is a single wall, may be said to belong to one of the houses just as much as to the other. Macpherson sells No. 2, keeping No. 1 for himself. Without the fact being mentioned in the contract or conveyance, the purchaser of No. 2 acquires half the party wall, which is divided by an imaginary line in the middle. The wall in that case is not owned in common, but is in effect two separate walls joined together. But the owner of No. 2 has a right to have his half of the wall supported by the half which belongs to No. 1; and the owner of No. 1 has the right to have his half supported by the half belonging to No. 2.

When you have a wall of the kind secondly described—a *wall divided into two strips*, each strip belonging to the owner of the land on which that strip stands—either of the owners may take down or alter, or do what he likes with, his own half of the wall. But, you may say, suppose in pulling his own half down he injures the other man's half. The answer is that if he actually disturbs the bricks or stones belonging to the other man's part of the wall he is liable in an action for trespass. But if the damage done to the other man's half of the wall consists merely in the fact that it is left standing in such a condition that it will not stand up because it is deprived of the support rendered to it by the half that had been pulled down, then the answer is that there is no remedy.

Take the case of the wall alluded to on p. 1641, which was the property of Mr. Matts and Mr. Hawkins. Mr. Matts had the right to pull down that part of the wall which stood upon his land. And if, owing to Matts taking his part down, the part belonging to Hawkins had fallen down, Hawkins would have had no remedy. But a man pulling down half of a party wall in exercise of a right to do so must do the work diligently. I mean, not negligently. Although he may have the right to leave his neighbour's half of the structure without support, he has no right to go about the work in such a way as to damage his neighbour's, if he can reasonably do it in any other way; and if he does, and thereby weakens his neighbour's half, he will be liable to pay for the damage.

Now if you take the case considered fourthly in the above passages, where there is a wall divided down the middle by an imaginary line, the wall on the one side of the line belonged to "A," and on the other side belonged to "B," but each party has the right of support from the other; then neither of them can take his half of the wall down so as to leave the other half without sufficient support. The case given of where a man sells one of two semi-detached houses, retaining the other, is in point. The purchaser of No. 2 may not take down his half of the party wall between the two houses unless he **provides some other means of support** for the part of the wall belonging to No. 1. Understand, please, he is not precluded from taking his half of the wall down; he is quite entitled to do what he likes with his own property; but this right is subject to the usual qualification that in doing what he likes with his own he must not infringe upon the rights of another. Now that other has a right to

have his wall supported. If, therefore, the one who takes his half down props up the other half until such time as he can rebuild, he has done all that is necessary.

As to the case where the party wall belongs exclusively to one house, but the owner of that house has given to his neighbour the right of support for his roof, the owner of the wall can only take it down if he provides adequate support for his neighbour's roof.

One of the most important questions about party walls is, **Who ought to repair?** I am not prepared to say with distinctness what are the rights between two people who own in common a wall such as is described firstly in this chapter. It is quite clear that either of them has the right to repair the whole of the wall. But I do not think that either of them is compellable to repair by the other of them, unless there has been some contract made between them. Suppose there is a party wall between your garden and the next garden. You are unable to point to any origin for the wall. You cannot say upon how much originally of each party's land the wall was built, nor at whose expense. As I have said, in that case the law presumes that the wall belongs in common to your neighbour and yourself. Now suppose the wall gets into disrepair: bricks begin to drop off it. In my opinion you cannot compel your neighbour, neither can he compel you, to contribute towards the repair of the structure. If you take it upon yourself to mend the wall, you must pay for it, and in my opinion you have no right to demand contribution from him. If you want him to contribute anything towards mending the wall, you should make an agreement with him beforehand. I may say, however, that if you happen to live next-door to a neighbour who will not do the neighbourly thing, you have the right to go to the Court and ask the Court to divide the wall between you, you taking half and he taking half. The division is accomplished merely by drawing a line longitudinally the whole length of the wall. Then the wall ceases to be held in common.

I ought to say that **in some towns**, by local Acts of Parliament, there are special bye-laws relating to party walls. You should go to the town clerk's (or borough surveyor's) office, and procure these.

IN LONDON there is a code of statutory laws as to the rights of adjoining owners in respect of party walls. Where lands of different owners adjoin and are not built on at the line of junction, if either owner is about to build on any part of the line of junction he may protect himself in the manner following: He must serve a notice on the adjoining owner, telling him he intends to build a party wall on the line of junction. The notice must describe the intended wall.

If the adjoining owner consent to the building of a party wall, the wall is to be built half on the land of each owner, or in such a position as the owners shall agree; and the expenses of the building shall be defrayed by the two owners. In calculating how much each is to pay, regard is to be had to the use made, and the use which may be made, of the wall by the two owners respectively. Thus, if one owner wants a party wall for a very

big building and the other only for a little building, the man with the big building must pay the most.

But the adjoining owner on whom the notice is served may not want a party wall. **If he does not consent** to a party wall being built, the building owner must build an external wall, if he pleases, wholly on his own land. It may also happen that the man about to build does not wish to build a party wall, though he desires to build right up to the land where his land touches his neighbour's. The option, however, is his. He may either elect to build the external wall on the very edge of his ground, or he may be compelled to do it by the refusal of his neighbour to consent to the building of a party wall.

But the London building owner has an advantage over the building owner outside London. If he is to build an external wall, he has the right, at his own expense, to place on the land of his neighbour the projecting footings of that external wall, with concrete or other solid substructure underneath. Before he can do this, however, he must serve a notice in writing on the adjoining land-owner describing the intended wall. After he has put his footings and concrete on his neighbour's land, he must pay compensation for all damage he has occasioned; and he must take care that he only places his works at some level below the level of the lowest floor. **If any dispute arises** as to the amount of compensation to be paid, the building owner and adjoining owner each appoint a surveyor, the two surveyors appoint a third surveyor as umpire, and between them they settle the amount.

When a party wall actually is in existence, the rights of the owners are well defined in London. A building owner—that is to say, a person who is desirous of building, or of doing anything on his place which may affect the party wall, has the following rights:—

(a) To make good, underpin, or repair any party structure which is defective or out of repair.

(b) To pull down and rebuild any party structure which is so far defective and out of repair as to make it necessary or desirable to pull it down.

(c) To pull down any partition which divides any buildings and is not conformable with the regulations of the London Building Act, and to build a party wall instead.

(d) In the case of buildings having rooms or storeys, the property of different owners, intermixed, the right to pull down such of the rooms or storeys, or parts thereof, as are not built in conformity with the London Building Act, and to rebuild the same in conformity with the Act.

(e) Where buildings are connected by archways, or connections for public ways, or other passages belonging to other persons, to pull down such buildings, arches, or communications as are not in conformity with the Act, and to rebuild the same in conformity with the Act.

(f) To raise and underpin any party structure permitted by the Building Act on condition of making good all damage. The damage which must be paid for need not be structural damage, but may be damage to the internal footings and decorations. The person raising or underpinning the party structure is liable also to carry up to the required height all flues and

chimney-stacks belonging to the adjoining owner on or against the party structure.

(g) To pull down any party structure not strong enough for a building intended to be built. To rebuild the same of sufficient strength. But all this is on condition that the building owner make good all damage both to the adjoining premises and to the internal finishing and decorations thereof.

(h) To cut into any party structure upon the condition of making good all damage occasioned to the adjoining premises.

(i) To cut away any footings or any chimney-breasts, jambs, or flues projecting, or other projections, from any party wall or external wall, in order to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by such operation.

(j) To cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same. Here again any damage sustained by the wall or building by reason of the cutting away or taking down must be made good.

(k) To perform any other necessary works incident to the connection of a party structure with the premises adjoining thereto.

(l) The right to raise a party fence wall or pull it down and rebuild it as a party wall. A party fence wall is a wall standing on lands of different owners merely used to separate their lands. It is not a part of a building.

When the building owner proposes to do any of the things which I have stated he has a right to do, the adjoining owner may give him notice to build on the party wall or structure certain works that may fairly be required for the convenience of the adjoining owner. Such works are chimneys, copings, jambs, or breasts, or flues, or piers, or recesses. The building owner is obliged to comply unless the required works would be injurious to him, or cause him unnecessary inconvenience or unnecessary delay. Disputes are to be settled by the three surveyors in the manner noted on p. 1645.

If in the case of a party structure one of the owners who intends to build or exercise any of those rights of which I have given a list can obtain the consent of the adjoining owner, he may exercise any of the rights in question at once; but if he does not get **the consent of the adjoining owner in writing**, he must give two months' notice to the adjoining owner in writing, stating what he is going to do, with details of the particulars of it. If the right in question affects not a party wall in a building but only a party fence wall, then the notice need be given only one month in advance.

The building owner is bound, whenever he **lays open any part of the adjoining land or building**, to make at his own expense and keep up for a proper time a proper hoarding and shoring, or temporary construction for protection to the adjoining land or building and the security of the adjoining occupier. It ought to be said that this, which is the purest neighbourliness, is not ordinary law elsewhere than in London, except in some towns where a special Act of Parliament has enacted something of the same kind.

Let me also say that the London building owner is liable for damages if he exercises any of the rights given him by the Building Act in such a manner or at such a time as to cause unnecessary inconvenience to the adjoining owner or the adjoining occupier.

If either the building owner or the adjoining owner serves a notice relating to a party wall or other structure upon the other owner, the person upon whom the notice is served must express his consent thereto within fourteen days. If he does not, he will be taken to dissent therefrom. And in that case the question will go to the arbitration or settlement of the three surveyors above mentioned. And if it should turn out, after a building owner has appointed his surveyor, that the other party did not intend to dissent, then the person who was in fault will have to pay the costs of that surveyor.

The building owner has **the right to enter the premises of the adjoining owner** if it be necessary to enable him to do the work. First, he must give fourteen days' notice. He must, of course, remove any furniture so as not to damage it. If he cannot get in, he may get hold of a police-constable and break open any of the doors or fences. The notice must be given both to the owner and occupier. But in cases of emergency fourteen days' notice is not required. It is then left to the building owner to give such notice as he can. As, for instance, if a builder is cutting away part of a party arch and he suddenly finds that the building of his employer or the adjoining building is giving way, and it becomes necessary for him to enter adjoining premises to avert some mischief, he should send somebody round at once to say that he is coming, and should then hasten to do what is necessary.

CHAPTER V.

RUINOUS AND DANGEROUS BUILDINGS. BUILDING PRECAUTIONS. ADVERTISEMENTS ON HOARDINGS

Urban districts—Building or fixture—Borough surveyor—May take immediate steps to avert danger—Notice to owner or occupier to repair—Must begin in three days—Otherwise summoned—Local authority doing work—Owner pays—Where owner cannot be found—Work to be diligently proceeded with—What does “dangerous” mean?—Dangerous to whom?—To passers-by in the street?—If owner does not pay, land may be taken—Compensation—Sale of material—SCOTTISH BURGHS—Law similar—Except as to joint owners—Procedure—Occupiers may be removed out of such structure—Owner liable for all expenses—PRECAUTIONS DURING BUILDING OPERATIONS—In England—Precautions to be taken—To keep footway or street free as far as possible—Hoardings—Hand-rails—Platforms—Fencing off excavations—Advertisements on hoardings—Leaving building materials about—In Scotland, permission to be asked to set up hoarding.

IN England, in urban sanitary districts, the urban authority has power to deal with *ruinous and dangerous buildings*. The law is that if any building or wall, or anything affixed thereon, is in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, it may be fenced off, and the owner or occupier be required to take it down and make it safe.

The way it is done is for the borough surveyor or district surveyor to see the building or structure, and to report on it to his authority if he thinks it in a ruinous and dangerous condition. In order that no time may be wasted and that the public may be at once protected from injury, the surveyor has power, even before he makes his report, to put up **a proper hoarding or fence for the protection of passengers**. Then the surveyor or the town clerk, or other officer of the Corporation or District Council, gives notice in writing to the owner of the building. Notice is only to be given to the owner if he is known, and is resident within the borough or district. A like notice is to be given to the occupier of the premises, or to be put up on the door or other conspicuous part. The notice may call on either the owner or the occupier to take down, or secure, or repair the building, wall, or other thing as the case may require.

The owner or occupier must set to work at once. He has **three days to begin** the work of repairing, taking down, or securing the ruinous and dangerous structure or fixture. For the notice may be given in respect of such a thing as a sign-board or name-board over a shop, which the surveyor has noticed to be insecure. If the owner or occupier neglects to begin the work within three days he may be summoned before the justices of the Court, and the justices may order him to do what is required to be done in a certain specified time. Then if the owner or occupier does not do

what the justices order him to do, the urban sanitary authority must itself take the matter in hand, and must cause the building, or wall, or other thing, or so much of it as is ruinous and dangerous, to be made safe or else pulled down.

I ought to say that if the local authority should be compelled to take the work in hand itself, the cost does not come upon the occupier, unless he may have a contract with the landlord to pay such expenses. The local authority comes upon the owner for the money. I ought also to say that the justices will not order the occupier to pull down or repair the ruinous or dangerous structure or fixture unless the owner cannot be found.

The local authority may not only do the work itself where the owner refuses to do it, but it may also do the work where the owner cannot be found so as to be served with the magistrate's order.

So much as to the proceedings which happen if the work is not begun within three days after the surveyor of the Council gives notice to the owner and occupier of the ruinous and dangerous condition of the structure. But not only must the person liable begin the work within three days, he must **proceed with all due diligence**. That is to say, he must start within three days and keep on at the work, employing as many men as could reasonably be required to do the work promptly and efficiently; and he must keep those men at work until the whole is finished. If the property-owner fails to proceed with the job with reasonable celerity, he may be summoned before the magistrates, ordered to do the thing within a certain time, and if he neglects to do it the local authority may do it itself.

I have said that the **expenses fall on the owner**. These expenses are not only expenses of taking down, repairing, rebuilding, or securing the dangerous structure, they also include the expense of putting up the fence and hoarding first put up by a surveyor as a protection. If the owner can be found within the limits of the urban sanitary district, the District or Town Council must first of all demand the expenses. If he does not pay, the Justices' Court may order a distress on his goods; and 'if this is ineffectual, or if the owner cannot be found (but in either case, the local authority has to give twenty-eight days' notice to the owner), and if at the end of twenty-eight days he has not paid, **the Council may take his land**, and may give him compensation for it in the manner alluded to in various parts of this work. They deduct from the compensation the amount of the expenses owing by him. Having acquired the land, they may proceed to sell it and apply the money to the borough funds.

When the Council pull down a house or building because it is ruinous or dangerous, they are at liberty to sell the material. With the money realised in this way, the first thing they do is to pay for all the work that has been done. And if there should be any balance left after this, they hand over that balance to the property-owner. But if the sale of the materials does not cover the amount of the expenses incurred in fencing off and pulling down the building, the local authorities may bring an action

against the property-owner or get a distress warrant from the justices for the balance

IN SCOTLAND.

There is, however, another provision in the Scottish Act (the Burgh Police Act) relating to houses which are in an unsafe condition. It is, that if any of the houses, buildings, or areas have become wasted and ruinous within the burgh, and have become receptacles for filth and other nuisances, or unsafe and unfit for use, and the houses, buildings, etc., are **held by two or more joint owners**; and it appears to the local authority that the house, etc., cannot be rebuilt or disposed of to advantage without the consent of the parties interested therein, it is for the burgh prosecutors, or the Burgh Council or Commissioners, or for any owner or part owner of the property, to apply to the sheriff to have the property valued. The valuers have to distinguish between the value of the several interests in the property possessed by the different owners; and on the report of these gentlemen, the sheriff makes an order in which he says how much of the total expense shall be borne by each of the joint owners. The three persons to be appointed are to be men of skill—that is, apparently, surveyors.

The procedure in Scotland in the burghs is slightly different from the English procedure, in this way—that if the surveyor of the burgh finds a building or wall, or anything affixed thereon, to be in a ruinous state, or dangerous to passengers or to the occupiers of the building or of the neighbouring buildings, he has to take certain action. *First*, he must immediately cause the occupiers endangered thereby to remove from the occupancy of such buildings until the same are put into a safe condition. *Secondly*, he has to cause a proper hoarding, or fence, or prop to be put up for the protection of passengers. If he thinks it necessary, he may cause the neighbouring buildings to be properly shored up. *Thirdly*, he shall cause notice in writing to be given to the owner of the dangerous structure if he be known, and also cause such notice to be put on the door of the building or on the wall, or on a conspicuous part thereof, or otherwise to be given to the occupier thereof. The notice is to require **the owner, not the occupier**, forthwith to take down, secure, or repair the dangerous structure or fixture complained of. Then we go on just as in England.

The burgh authorities, if they decide to take the premises and pay compensation, are to send a notice of their intention through the post-office to the owner's last known address. They are also to post a notice upon the building or other premises which they intend to take.

In the case above cited where a ruinous building belongs to several people (as in the case of a house built in flats where all the flats have different owners), I have said that the sheriff may order three skilled valuers to value the property. The various owners can then be given the option of purchasing the interests of the other owners so as to bring the whole building under one ownership. But suppose none of the owners is willing to buy the others out, then the sheriff may order the houses, buildings, and areas to be

put up to auction at an upset price equal to the valuation fixed by the three skilled persons. The auction is to be properly advertised in such fashion as the sheriff may think fit; and the purchaser at the auction must within ten days deposit the whole of the purchase money in a bank to be named by the sheriff.

PRECAUTIONS DURING BUILDING OPERATIONS.

When I speak of building operations, I include such work as making sewers and so on. First, I should just like to say that all local authorities, when they are repairing the roads or the sewers vested in them, are bound to take proper precautions against accident. Such precautions are the making of barriers to protect the public against falling in holes, the lighting of the works at night, and so forth. But I am more concerned here with the precautions to be taken by builders and building owners when they are building or taking down or repairing any structure. IN ENGLAND the law varies according as to whether the urban authority has adopted Part III. of the Public Health Act or not. If the urban authority has adopted that part of the Act, there are slight differences to be noticed which I will point out as I go along.

In all urban districts, every person intending to build or take down any building, or to cause the same to be so done, or to alter or repair the outward part of any building, or to cause the same to be so done, is **bound to take certain precautions** where any part of the street or footway would be obstructed or rendered inconvenient.

Before the work is started, the builder or building owner must cause sufficient **hoards or fences** to be put up, in order to separate the building from the street. Where the Public Health Act, 1890, has been adopted, the local authority has the power to dispense with this requirement. Mind, the builder must not dispense with it on his own authority. The hoarding or fence can only be omitted if the local authority has previously given permission.

This hoarding or fence is to have a **convenient platform and hand-rail**, if there be room enough, to serve as a footway for passengers outside the hoarding or fence. Where the Public Health Act, 1890, has been adopted, this platform must be covered—that is to say, must have a roof over it. Moreover, where this Act has been adopted, the platform and hand-rail *must* be put up; the words “if there be room enough” are left out of that Act. But the builder or building owner is only bound to provide the hand-rail and platform if the local authority require him to do so.

The hoarding or fence, with its platform and hand-rail, must be **kept standing and in good condition** to the satisfaction of the authorities during such time as the public safety or convenience requires. But as this is rather a vague requirement, the Public Health Act, 1890, says that the platform and hand-rail and the hoarding or fence must be kept there during such time as the local authority may require. This makes the matter a

little more certain, and does not leave it to the builder to say when he may take the hoarding and platform down.

The builder or building owner must in all cases where it is necessary, to prevent accidents, cause the hoarding and platform to be sufficiently lighted during the night. In districts where the Public Health Act has been adopted, the builder is not left in doubt as to whether he ought to light up or not. If the urban authority require him to light up during the night he must do so; otherwise not.

There is one more requirement which is aided by the Public Health Act, 1890, and is in force in districts where that statute has been adopted. It is, that the builder or building owner must remove the hoarding or fence, platform, and hand-rail when required to do so by the local authority. In districts where the Public Health Act, 1890, has not been adopted, the law is silent in this respect; and I believe that if a builder were to keep up a hoarding, platform, etc., after the necessity for its continuance had ceased, he could be prosecuted for a public nuisance—namely, obstructing the highway. People who break the law as to the putting up of hoardings and fences, platforms, and hand-rails, and as to lighting the same, are liable to a penalty not exceeding £5, and 40s. for every day during which the offence continues.

There is only one other little matter with regard to hoardings and fences put up to screen the buildings during demolition, alteration, or erection, which I should like to notice. It is with respect to advertisements displayed thereon. There is a special Act on the subject, dealing primarily with the rating of advertisement hoardings. But in this Act was slipped a clause by which power is given to urban authorities to grant licences for putting up hoardings, and to make it a condition when they allow any hoarding to be put up that no advertisements shall be placed thereon, or that advertisements only of a certain character should be placed thereon. In fact, the local authorities have power to regulate the **advertisements on hoardings** when those hoardings are such as are put up by way of protection in the case of repair, demolition, and construction of buildings.

If a builder or other person deposits building materials, rubbish, or other things of a like character in any street in an urban district, or makes a hole there, whether he does this with the permission, or even by the order, of the local authority or not, he must fence it off. He must also light it up at night. If he fails to do these things he is liable to a penalty not exceeding £5, with a further 40s. a day for every day which the nuisance continues. This, be it said, is quite independent of any right that any private person has. Thus, if I am going along a street in the dark, and I fall into a hole left unfenced by a builder and break my leg, the builder must pay me damages, and will also be liable to be fined for a breach of the Public Health Act.

Moreover, any person who leaves building materials or other things, or allows the hole to remain longer than is necessary, is liable under the Public Health Acts to a fine not exceeding £5, and 40s. a day during the con-

tinuance of the offence. This again is quite independent of the ordinary rights of private citizens to take action for private damage caused by the obstruction.

The local authorities of an urban district may repair, or protect, or enclose any building or hole or other place, not necessarily in a street, but near it, where they think such precautions ought to be taken to prevent danger. And the owner of the property must pay the local authorities all the expenses they have been put to in protecting the public from the danger.

IN SCOTLAND hoardings are to be set up by persons who are about to build or to take down any building, or alter or repair one, in all cases where any street or footway may be obstructed or rendered inconvenient. Before any hoarding of the kind is put up, the authorities of the burgh must be asked for permission; and not until such permission is given can the hoarding be put up. I need hardly say, perhaps, that until the hoarding is up the building operations cannot be begun. The hoarding is to be constructed and maintained to the satisfaction of the burgh surveyor, and is to be kept there such time as that gentleman thinks proper. Here also is to be provided a convenient platform and hand-rail if there be room enough. And from sun-setting to sun-rising sufficient lights are to be put up where it is necessary to prevent accidents. The burgh authorities have power to order the removal of the hoarding, platform, etc., within such time as they fix. People who put up the hoarding or fence without permission, or who do not maintain the proper platform and hand-rail, or proper lights, or who do not take the structure down within the time allowed, are liable to a penalty not exceeding £5, and 40s. a day during the continuance of the offence. Moreover, the burgh authorities have power to make a charge for the occupation of any ground in the street enclosed by the owner of the hoarding.

As to lighting and fencing off building materials and excavations in the streets, the law is the same as in English towns. But as to keeping building materials deposited or excavations made for an unreasonable time, the law is slightly different. The Scottish rule is rather more absolute. The burgh surveyor fixes a time within which the materials must be removed or the excavation filled up. If his order be not obeyed, the culprit is liable to a fine of £5, and 40s. a day, or such less sum as the magistrate may impose.

In Scottish burghs also the authorities have the right to protect the public against danger from holes, or dangerous buildings, or hoardings in or near any street. The surveyor is again the judge of whether the hole or the structure is dangerous to people passing along the street. If he says it is, the burgh authorities may proceed to fill the hole up, or fence it round, or otherwise to protect the public. The expenses of such operations are to be recovered from the owner of the building or place; or, in the case of a hoarding or a hole, from the person who causes the hole to be made or the hoarding to be erected.

CHAPTER VI.

DEMOLITION OF INSANITARY PROPERTY AND CLEARING INSANITARY AREAS.

Duties of local authorities—Bad neighbourhoods—Representation by medical officer—What representation may be—Areas unfit for habitation—How unfit—When medical officer refuses to act—Power of ratepayers—Right to petition to Local Government Board—Inquiry by the department—Practicability of improvement scheme—Compulsory acquisition of property—Notice to owners—Including lessees—Where name of owner is unknown—Lessees and owners asked to consent—Confirmation of scheme by Local Government Board—Steps in compulsory purchase—The price to be paid to the owner—Fair market value—How estimated—What the local authority need not pay for—Schemes to increase compensation—Overcrowded houses—Rental not basis of value—Houses let for illegal purposes—Rental increased thereby—Inflated value—No compensation—Houses in bad condition—How compensation reduced—Compensation ascertained by arbitration—Notice of time of arbitration—All claims decided at once—Local authority pay expenses of conveyance—Where land is not owned absolutely by one person—Costs of arbitration—Depend on result—Appeals—Strictly limited—DEMOLITION OF SINGLE HOUSES—Injurious to health—Unfit for habitation—Duty of medical officer—Complaints by neighbours—Complaint by Parish Council—Medical officer compelled to inspect—Urban districts—Rural districts—Petition to Government Department—Procedure by local authority—Proceedings for closing the premises—The owner summoned—Closing order by magistrate—Removal expenses of tenants—Allowed by magistrate—Paid by property-owner—Further proceedings—Who is the owner?—Person entitled to the rents—Trustees and guardians—Mortgagees—Lessees—Some lessees not included—Lessee's plan of action—Charging order—Effect of—How to obtain.

THE duties of the local sanitary authorities with regard to the demolition of buildings unfit for human habitation may be divided into two classes. The first class is the class of cases which may be called BAD NEIGHBOURHOOD cases. The second class may be called bad house cases.

The Medical Officer of Health (in London this includes any Medical Officer of Health for any part of London) has the right to make what is called an official representation to the local authorities to the effect that certain **houses, courts, or alleys are unfit for human habitation**; and that the narrowness, or bad arrangements, or bad condition of certain streets, or groups of houses within a particular area, or the want of light, or ventilation, or proper conveniences, or any other sanitary defects, or several of these things combined, either are dangerous or injurious to the health of the inhabitants of the part mentioned or inhabitants of the neighbouring buildings. In order to enable the local authority to do anything, the official representation must go on to say that the houses or area (as the case may be) cannot be effectually dealt with except by *an improvement scheme* for the rearrangement

and reconstruction of the streets and houses within the area (or of some streets and houses within the area). The representation to the above effect having been made by the Medical Officer of Health, the local authorities must consider the representation, and if satisfied that it is true and that they have sufficient money or credit for the purpose, shall pass a resolution to the effect that such area is an unhealthy area and that a scheme ought to be made for its improvement. They shall then proceed to make the scheme. Before dealing briefly with the scheme, let me say a word or two more as to the official representation aforesaid. The Medical Officer of Health may make such a representation whenever he thinks fit to do so. But if he be supine he may be compelled to move by outside force. Two or more Justices of the Peace acting within his district may complain to him of the unhealthiness of some area, or twelve or more **ratepayers of the district** may make a like complaint. On receipt of the complaint, the Medical Officer of Health must at once go down and inspect the area and make a report, stating the facts and whether in his opinion the area or any part of it is an unhealthy area.

Suppose you should be a man taking a great interest in the housing of the poorer classes, and you should find yourself met by a report from the Medical Officer of Health that the area complained of by you and your fellow-ratepayers is not unhealthy, you can put a little life into the proceedings by sending up a memorial to the Local Government Board. If the matter affects the London County Council area, you will have to go to the Home Secretary. Then the Local Government Board or Home Secretary may make such inquiry as they think proper; and, if satisfied of the truth of the allegations, may order the local authority to go into the question without waiting for a report from their Medical Officer of Health. But on the whole the Medical Officer of Health is the man upon whom this act depends. I am only going to deal very shortly with improvement schemes.

An improvement scheme, which must also be accompanied by maps, particulars, and estimates, may exclude any area mentioned by the Medical Officer of Health or include land not mentioned in his representation. This depends on the view taken by the Council of the practicability of schemes submitted. The scheme may provide for the widening of any streets by which the unhealthy area is approached. And it must provide accommodation for any of the working-classes displaced by the scheme; by which is meant, that it must provide dwelling accommodation in lieu of any working-class houses required to be pulled down. The scheme must be advertised, and it must be confirmed in ways not necessary to be described. I am rather concerned in this place with the next part of the proceedings.

After the scheme has been duly advertised in a local paper, **notice is to be served on all the property-owners**, as well as on all tenants and occupiers of lands and houses proposed to be taken compulsorily for the scheme. By *property-owner* I mean freeholder or reputed freeholder, lessee or reputed lessee, and, in fact, all people who draw rents and profits from the lands, or whom the Council have any reason to think do so. For example, if the Council do not happen to know the real name of the owner of property,

but they do know that the rents are collected by a firm of estate agents, they ought to serve the notice on the estate agents.

The notice in question states that the lands owned or occupied by the person in question are wanted, and are proposed to be taken compulsorily for the purpose of an improvement scheme. As far as the occupier of premises is concerned, he is not asked whether he consents or not; but if the person is **a lessee or owner**, he is asked whether or not he dissents. Suppose you should be the owner of a piece of property in a neighbourhood which has been denounced as an unhealthy area, and in respect of which an improvement scheme has been made. Notice ought to be given to you that your land will be wanted. This notice ought either to be delivered personally to you (or to your agent if you have one), or by leaving it at your last-named place of abode, or sending it to you at that address by post. If you happen to be abroad, or if neither you nor your agent can be found, it is enough to leave the notice on the premises with one of your tenants or somebody. If the premises are not occupied, then the notice **can** be pushed under the door or into the letter-box.

But even then the scheme is not by any means ready. It has to be confirmed by the Government Department—the Home Department as to London, and the Local Government Board as to the rest of the island. Confirmation is obtained by a petition to the Department. And if the Department thinks right it may send down an inspector to hold a local inquiry, at which it is possible you may receive a notice to attend, and may attend and state the grounds of your objection. The scheme having been confirmed, if it arrives at that length, the scheme goes forward.

Then the **local authorities begin to buy up the land**. If they take any fifteen houses or more at one time they must give notice of their intention thereof by placards, handbills, or other general notice stuck about the place near the houses in question; and must do this at least thirteen weeks before they actually take the houses over. Even then, before they may take possession against the will of anybody they have to go to a Justice of the Peace, prove to him they have given the proper notice, and obtain a certificate from him authorising them to take the houses.

Suppose they take your land or your houses. **They must pay you for it**. And the amount they must pay you is this:—

1. **THE FAIR MARKET VALUE** of the land or your interest therein. This is to be estimated at the time of valuation. Regard must be had to the nature and condition of the property, to the probable duration of the buildings as they then stand, and the state of repair of those buildings, and without any additional allowance for what is called severance. By severance I mean taking part of a man's property and leaving the other part on his hands.

2. You must not add to or improve your property after the date of the advertisement of the improvement scheme in the local paper; if you do, you act at your own risk entirely. You will not be paid for the additional value you put into the property, unless what you did was something absolutely necessary for maintaining the property in repair.

I have known in the old days many a man increase the amount of compensation payable to him by a public authority by a little dexterity. Thus, a man would have a yard which was used as a common yard by the occupiers of houses backing on to it. Of course, with the right of way over it, the yard was worth practically nothing. Hearing of an improvement scheme going forward, and knowing his land, including the yard, might be required, the wily owner I speak of bought up the rights of everybody in that yard for a few pounds. Then the yard, being free from all restrictions, had to be regarded as so much land equal in valuation to other land not built upon in the same neighbourhood. This kind of thing is forbidden now. If you have property which we will call "A" at the time the notice was advertised in the local paper, you cannot, by buying up other rights or property, which we will call "X," increase the value of either "A" or "X." All you are entitled to is the value of "A" separately, plus the value of "X" separately, without regarding the extra value which may be conferred on either "A" or "X" by the mere fact that they are in the same ownership.

There are other matters to be taken into consideration when compensation is assessed in respect of a house or premises compulsorily taken by a local authority as being part of an unhealthy area, or as being necessary to be taken in order to make an unhealthy area healthy.

It very often happens that areas of the kind specified are inhabited by people of the very poorest class, who live—I will not say are contented to live—in **a condition of overcrowding** that is most astonishing to all decent people. And it very often happens that the landlord of premises in a district of this kind secures an enormous return; not because his premises are really worth much, but because he lets them out to people in one room at a time, or something of that sort, at comparatively high rentals. I myself have come across cases where owners of slum property have been making fortunes in this way. A landlord of this kind has, for instance, a house which on the very outside might let for £60 a year if the tenant paid the ordinary tenant rates and taxes and the landlord did the usual repairs. The house being, say, of three storeys and a basement, and consisting of nine rooms from the ground floor upwards and two rooms in the basement, the landlord has contrived to let each room separately at an average rent of 5s. a room. He never does any repairs, except just enough to prevent the place from absolutely tumbling down. He draws altogether about £140 a year gross. Of course, he has to pay all the rates and taxes, but he manages to make, even counting an occasional bad debt, at least £100 a year on a house which, if it had been let in a good condition of repair as one house, would certainly not have yielded half that sum.

Now the value of a house depends very largely on the rental. In fact, the rental must always be the basis of calculation for valuing the premises. But in a case like this Parliament has seen fit to say that a man shall not be allowed to take advantage of the fact that he has been overcrowding his house and so reaping a considerable harvest. For the Act specifically provides

that it shall be open for the local authority to prove that the rental of the premises was enhanced by reason of the same being so overcrowded as to be dangerous and injurious to the health of the inmates; and the **compensation is to be reduced** by so much as the arbitrator who assesses the compensation thinks is attributable to the overcrowding

It is also well known that many of the houses in slums are **let for illegal purposes**. I need hardly say that a landlord who lets a house knowing that it is to be used for illegal or immoral purposes may be prosecuted as a criminal. It is further well known that, by reason of the simple fact that it is criminal to let a house for such a purpose, exorbitant rents are charged when houses are let for that purpose. And, again, the Legislature has enacted that if a property-owner, seeking compensation because his premises are being pulled down by the local authority under an improvement scheme relating to an unhealthy area, that property-owner shall not be able to obtain compensation inflated because he has allowed the premises to be used for an improper purpose

It comes in effect to this: The local authority having elaborated and passed a scheme and obtained the approval of the Local Government Board, give notice to "A B" that it intends to take his premises. He sends in a proper claim for compensation. Of course, his claim must give particulars upon which he bases it. These particulars show that he has been receiving a clear £3 a week rental in respect of the house. The local authority may rejoin that, although this is so, that large amount is simply due to the fact that the premises were let to a certain class of people who used the house in a manner contrary to public morals and good order. And when his claim comes to be assessed the property-owner will find that his compensation will be cut down to the same basis as if he had let his premises to decent, respectable, law-abiding persons who had paid him a fair value for the accommodation.

The third thing to be taken into consideration is whether the premises were in **such condition as to be a nuisance**, or were in a state of defective sanitation, or were not in reasonably good repair. Premises are a nuisance where they are so tumble-down or rotten as to constitute danger to public safety or public health.

Now in the last mentioned of the three cases the *compensation will be reduced*. If the premises are in such a state as to amount to a nuisance, there must be deducted from the amount payable to the owner such a sum as would have abated the nuisance. If they are in a state of defective sanitation, an amount will be deducted which would have put them in a proper sanitary condition; and if they were not in reasonably good repair, there will be deducted such an amount as would have been necessary to place them in good repair. These provisions are very stringent; but there is another provision even more so. You must remember that by hypothesis we are dealing with slum property in almost every case. Now if it should happen that the house or premises to be taken are unfit for human habitation, and are not reasonably capable of being made fit for human

habitation, the owner of the property gets practically nothing for the house or premises.

What he does get is this: he gets the value of the land simply as a site. That is, what would be paid for that piece of land, if it were vacant, by a builder. Secondly, he gets the value of the building materials that are on the land—that is to say, he is paid for the house just as being so many old bricks, old slates, and so on.

Compensation is **ascertained by arbitration**, unless the property-owner can come to an agreement with the local authority. If the parties can come to an agreement, well and good. If not, the Local Government Board (in London cases the Home Office) appoint an arbitrator to settle the amount. This arbitrator is not appointed for each individual case. As soon as the local authority deposits its schedule of lands to be taken, it should apply for the appointment of an arbitrator by the Local Government Board or Home Office.

As soon as the arbitrator is ready to go about his duties, he gives notice to all who claim compensation that at a certain time and place he will hold his arbitration court to settle amounts due to the various claimants. This notice may be given by **public advertisement**, but it ought to be given in such a way that every claimant actually gets to know of it. My advice to any property-owner who has refused to agree with the local authority is for him to go to the town clerk's office and ask that gentleman to let him know when the arbitration is about to come off. The arbitrator does not give his decision at the end of each case. He waits until he has heard all the claimants who make claims in respect of that particular scheme. He then makes an award under his hand and seal. This award is sent to the local authority, and the local authority publishes an advertisement stating that the award has been made and is at the office of the local authority. And all persons are required to send in notice of what they claim as being theirs under this award.

I am not going to deal with the next step, except to say that if you are the property-owner in question you had better go to your solicitor and let him do the rest for you. The rest consists of making out what is called an abstract of the title to the land, and the preparation of a proper conveyance; and the local authority pays for the abstract.

It very often happens that **land does not belong to one person absolutely**. Thus, a man may be the owner of land in one sense, and yet only be the owner of it subject to the right of somebody else. For instance, he may be the owner of land subject to a chief rent, or to a mortgage, or to a ground rent, and so on. In such cases—that is, where several people have interests in the same land—the arbitrator has a power to apportion rents, encumbrances, etc.

The statement of the interest you have in the land and the abstract of your title having been sent to the local authority, if the local authority thinks that you really have absolutely the interest in the land that you claim, this is soon followed by payment. Within thirty days after the abstract and statement are sent in, the local authority must let you know how

much you have been awarded by way of compensation. And thirty days after you have demanded payment of your money they must pay you that amount; if not, you are entitled promptly to take proceedings.

As to the *costs of the arbitration*, the arbitrator has power to award proper costs in all cases, and the amount which he certifies for must be paid by the local authority. But he is not bound to make the local authority pay where he considers the costs ought not to be paid by it. Again, he ought not to compel the local authority to pay where he is satisfied that the property-owner neglected after due notice to deliver to the local authority the proper statement of the amount and particulars of compensation which he claimed. You see, if a man who claims compensation in respect of lands neglects to furnish the local authority with a statement of what he claims, accompanied by such details as will enable the local authority to judge of the value of the property, the local authority cannot make him an offer of compensation. It has not the materials to go upon; and therefore it will be considered that the property-owner has himself brought about the expense of the arbitration.

The third case in which the claimant will not get any costs (this is not within the arbitrator's discretion) is where the arbitrator awards to the claimant a sum not more than the amount offered by the local authority before the arbitration began. Thus, if you sent in a claim for compensation for £2,000, and the local authority offered you £1,200, and you refused to take it, and the arbitrator, on hearing the evidence, awards you £1,200 or less, you will not get any costs, but will have to pay your own expenses.

Appeals may be brought in a rather curious way against the decisions of an arbitrator. The local authority may appeal, or the person to whom compensation is given may appeal. But neither side can appeal unless the amount in the arbitrator's award is £1,000 at least. Thus, if an arbitrator awards you £900 you cannot appeal against his decision; but if he awards you £1,050, and you think you ought to have had more, you may obtain leave to appeal.

I use the word "may," because even then the right is very limited. You will have to make an application to the High Court. And the High Court can only consent to the decision of the arbitrator being reviewed where the Court is satisfied that otherwise a miscarriage of justice will ensue. By this I mean that you have to satisfy the Court that the arbitrator is not merely wrong, but is grossly wrong. And if you can satisfy the Court on that point, the Court will allow you to have your compensation settled by a jury.

I now come to the second part of this chapter. Hitherto I have been dealing with the demolition of property under a scheme for the improvement of a whole area. Now I come to the

DEMOLITION OF SINGLE HOUSES

which, without necessarily being in an unhealthy area, are themselves dangerous and injurious to health or unfit for human habitation.

Upon the local authority is cast the duty of making, or causing to be made, periodical inspection. The inspection is with a view of ascertaining whether any dwelling-house within the sanitary district is in a state so dangerous or **injurious to health as to be unfit for human habitation**. As we all know, I dare say, this duty is not undertaken by the local authority itself, but is delegated to the Medical Officer of Health and the sanitary inspectors. I may here add that it is the duty of the Medical Officer of Health, quite apart from any instructions given to him by his Council or sanitary committee, to report if he finds any house in the condition above described. By "house" I mean dwelling-house.

The local authority may also be set in motion by householders living in or near to any street making a written complaint to the Medical Officer of Health. The complaint should state specifically that a particular dwelling-house in or near that street is in a condition so dangerous, or injurious to health, as to be unfit for human habitation. I may also say that a complaint of the same kind may be made by a **Parish Council** to the sanitary authority. Now, on the receipt of such a complaint the medical officer must make an inspection. He must do it forthwith. He is compelled also by law, after having made that inspection, to lay before the local authority the complaint in question and his report, which report must state that he has inspected the place, and that he has formed such-and-such an opinion. If he is of opinion that the dwelling-house is in the bad condition alleged, he must say so.

At the same time, a Medical Officer of Health cannot excuse himself for not having inspected insanitary premises simply by saying that he has received no complaint. He ought to inspect without complaint from anybody. But if he receives a complaint of four householders or of a Parish Council, he must inspect. The part of the statute I am now commenting on, so far as it relates to unhealthy areas, only applies to *urban sanitary districts*. But so far as it relates to the unhealthy dwelling-houses already considered it refers equally to *rural districts*. But an urban district is bound to take action against unhealthy houses, unless it chooses to run the risk of a Local Government Board inquiry. A rural sanitary authority has a more absolute discretion. In an urban district where a complaint has been made by householders or the Parish Council, and three months have elapsed, and the local sanitary authority has done nothing, the Parish Council, or the four householders, may complain to the Local Government Board and demand an inquiry into the subject.

With regard to London and rural sanitary districts, if the local authority declines to take any notice of a complaint, the body to which to appeal is not the Local Government Board, but the County Council. Suppose, for example, a complaint has been made of an unhealthy house in Blank Street by four householders in the Islington borough to the Islington Borough Council. The Islington Borough Council choose not to act on the complaint for three months. Four householders may then make their complaint to the London County Council. Suppose the same thing happens in a little village in Buckinghamshire, and the Rural District Council on being complained to

takes no notice for three months. The householders who made the complaint, or the Parish Council, as the case may be, may appeal to the Buckinghamshire County Council.

So much for the setting in motion of the Act against unhealthy dwelling-houses. Now let us suppose that the Medical Officer of Health, or a sanitary inspector, has reported to the local authority that a dwelling-house is so dangerous to health as to be unfit for human habitation. Let us further suppose that the Town Council or District Council has endorsed the complaint and has made up its mind to take proceedings. The question is, **What proceedings have to be taken?**

That rather depends upon the state of the premises in question. The house may be in such a bad state as to sanitation and so on, or so much out of repair, as to make it unfit to be lived in; yet it may be that it could be made fit by the expenditure of money. On the other hand, the house may be so bad that it would be quite impossible to repair it so as to make it fit to live in. In any case the first thing to be done is for the local authority to serve a notice, either upon a person who is causing the premises to be unfit for habitation or the owner or occupier of the premises. The notice says that the local authority being satisfied that the premises No. 90, Blank Street, are in a state so injurious or dangerous to health as to be unfit for human habitation, hereby requires the person on whom the notice is served to make the premises fit for human habitation within a certain time. It goes on to say that if the notice is not complied with, **proceedings will be taken for closing up the premises.**

If the owner of the place does not put it in order (which includes the fact that he may do something but that something is not sufficient), summons before the Petty Sessions, or stipendiary or police magistrate, will follow. This summons simply states that a complaint had been made of the state of the premises, and calls upon the defendant to come and answer that complaint. He appears, and the question is tried whether the house is, or is not, fit to be dwelt in. If the magistrate decides that it is not fit, he makes what is called a **closing order**. This closing order absolutely prohibits the using of the premises for the purpose of human habitation until they are rendered fit for that purpose to the magistrate's satisfaction.

The order is sent to every occupying tenant of the dwelling-house. And every tenant is obliged to clear out, bag and baggage, within the time named in the order. This time must be not less than seven days from the decision of the magistrate. This is by way of giving the tenants an opportunity to seek a new home. The local authority, however, is bound, if the magistrate orders it to be done, to make a reasonable allowance to every tenant to cover the **expense of his removal**. But the owner of the property, the fountain of the mischief, as he is looked upon, has to pay this. That is to say, suppose there are twelve people occupying the dwelling-house, and the magistrate authorises the local authority to pay each of them £2 for removal, the local authority pays the £24 and then comes down on the owner of the property for the amount.

Where a magistrate has made an order for compulsory closing of a dwelling-house, and has not afterwards declared that the place has been repaired to his satisfaction, the local authority has further powers. First of all, the local authority must consider whether the dwelling-house has been rendered fit for human habitation, or whether the owner is taking the necessary steps with due diligence. Assuming that he has not taken the proper steps, or is not taking them, they must then consider whether the continued existence of the building which is for a dwelling-house, or part of a dwelling-house, is dangerous or injurious to the health of the public or those in the neighbouring dwelling-houses. That is to say, they have to consider whether it is safe from the point of view of the neighbouring residents that this house shall exist. If they come to the conclusion that to allow its further existence would be to prejudice the health of the neighbours, they pass a resolution that it is expedient to order the building to be demolished. Of this resolution they give notice to the owner of the property, and in the notice they specify a time and place, not less than a month after the notice is served, when and where they will consider the matter further. At this time and place the owner has the right to attend and state his objections to the demolition. Having heard him, the local authority may decide to order the building to be demolished. But it appears they cannot order the building to be demolished if the owner undertakes to execute forthwith the works necessary to render the dwelling-house fit for human habitation. The owner, if he considers himself aggrieved, may appeal to the Court of Quarter Sessions; but he must give notice of appeal within a month after he has been served with the demolition order. And the Court of Quarter Sessions must, at the request of either party, make a special statement of the facts for the determination of a Superior Court, in which case the proceedings may be removed into that Court.

All the way through, in speaking of unhealthy dwelling-houses, I have used the word "owner." **Who is the owner?** Roughly speaking, the owner of property for the purpose of this Act is the person who is in receipt of the rack-rent. I have explained elsewhere that rack-rent does not mean exorbitant rent, but merely the full rent. Thus, if I have a piece of freehold land, and I let it to you on a building lease for ninety-nine years at a ground-rent of £5 a year, and you build a house on it, and let the house for £40 a year, you are the owner. You see, you receive the full rent of the property, and if you, having such a building lease, create what is called an improved ground-rent—that is to say, having built the house, you sublet it at a rent of £10 10s. a year to a man who again sublets it to an ordinary tenant, who pays £40 a year, you are not properly the owner within the meaning of the Public Health Acts.

Now the owner may be served with notices in respect of an unhealthy dwelling; he may be the owner not only for all ordinary purposes, but he may be a person having a much smaller interest in the property. A tenant in tail or for life is the owner. The guardian of an infant who is entitled to the property is the owner. Trustees are owners, and all parties for the

time being entitled to the receipt of the rents and profits of the house. This would include the ground landlord. It would include the following persons—a man dies and leaves a house to his widow for life, and after her death to his eldest son. During the widow's life-time she is the owner.

Moreover, it **includes mortgagees** of premises; it includes all **lessees** except persons holding, or entitled to the rents of, the premises for a period of which twenty-one years do not remain unexpired. Now, I want you to follow this very carefully. It may be very important for you if you are the lessee of premises which you have sublet, to know whether you have to be put to all the expenses and annoyance of demolition proceedings and so on. Suppose you have bought leasehold property. The lease was granted in 1850 for a period of seventy years—that is, it would fall in in the year 1920. If the house becomes so unhealthy as to be noticed by the local authority, and ordered to be closed by a magistrate, you have to suffer all the trouble and expense. Suppose proceedings are taken by a local authority in the year 1898. They can make you the defendant, and get an order that you shall put the place in repair, closing it in the meantime. Also that you shall pay the expense of the tenants' removal. You see, the reason is that you are the person entitled to the rents and profits of the house under a lease which has more than twenty-one years to run. But if the local authority takes action in the year 1900, when there are only twenty years to run, they cannot take action against you. You see, you are a person who holds under a lease of which twenty-one years do not remain unexpired. Therefore, if the local authority issues a summons against you, you have **a perfect defence**. In that case they will have to come on the freeholder.

Now let me say something as to what you can do if proceedings are taken against you in the year 1898—that is, I mean when you are responsible for the house because more than twenty-one years of your lease remain unexpired. The local authority serves you with notice to put the place in order and make it inhabitable. Suppose that without going to the expense of proceedings before magistrates you come to the conclusion that you can make the house fit for habitation. But it will cost a good deal of money. You very naturally say to yourself, "Why should I spend several hundred pounds in practically making a new house for the benefit of the ground landlord?" Now the law does not require this to be done. True, you must do the work, unless you are going to run the risk of having the house shut up. When you have done it, however, it by no means follows that you are going to be out of pocket.

I will tell you **what to do**. You execute all works required to make the house fit for human habitation. You then apply to the local authority for what is called a **charging order**. The effect of the charging order is that it creates a sort of mortgage on the premises for your benefit. It makes a sort of rent charge, very like an extra ground-rent, payable to you. For every hundred pounds you have spent, you are to be paid £6 a year for thirty years, which is to cover both principal and interest. I need hardly say, also, that you, as landlord of the premises for the next twenty-one years or more, reap the benefit by being able to let the house on better terms.

Suppose you have spent the sum of £350 in these repairs, you will be entitled to an order to pay you £21 a year for thirty years out of the rents of the dwelling-house which you have improved. At the end of the thirty years you are supposed to be repaid your money with interest; and until you have been paid, you have a hold over the premises to the extent that nobody can sell it or deal with it so as to get rid of your right.

Before you get the charging order you must make application for it to the local authority. You must get the borough or district surveyor, or architect or engineer, to go down to the house and inspect your works. If he is satisfied, he gives you a certificate that you have executed the works to his satisfaction. You take this certificate, or send it along with a written application to the local authority. You also send the accounts of the various people who have done the work, and vouchers and receipts for all payments made. Then, if the local authority is satisfied that you have done the work, and that the amount claimed by you is a proper amount, they may make an order charging the property as I have stated. Moreover, they may add to the actual expense of the works any expense you may have been put to in obtaining the charging order itself.

I ought to add that the charge created by this charging order has priority and preference over every other interest, mortgage, debenture, or whatever it may be, in respect of the house. I ought to say also that in Middlesex and Yorkshire you had better instruct your solicitor to register the charge at the land registry. And further, that the charge, after you have obtained it, is property just like any other property. You may sell it or mortgage it, or do what you like with it, and on your death it passes to your representatives just as if it were mortgage money.

CHAPTER VII.

OBSTRUCTIVE BUILDINGS AND PRIVATE IMPROVEMENT EXPENSES.

Houses causing unhealthiness—Though not themselves unhealthy—Called “obstructive buildings” —Complaint by neighbours—Medical officer inspects and reports—Local authority acts—Notice to the owner—He may attend and object—He may appeal—Amount of compensation—Something for compulsory demolition—Notice to treat—Local authority must buy land if required—But owner can retain land—Compensation for inconvenience—Deterioration of other property—Liability of adjoining owners—Betterment—Compensation settled by arbitration—PRIVATE IMPROVEMENT EXPENSES—What they are—Small property-owners—List of private improvement expenses—Private improvement rate—What it is—Payable by occupier—Part deducted from rent—Rate may be redeemed—How much—Landlord and tenant—Charge on the premises—What it is—Property changing hands—Person liable—How the charge may be enforced—Dispute as to amount—List of expenses recoverable.

OBSTRUCTIVE BUILDINGS.

JUST as some men, though not themselves witty, are the cause of wit in others, so some houses, though not themselves unhealthy, may be **the cause of unhealthiness** in other houses. Thus, a house which is not in itself unfit for human habitation may be so situated as seriously to interfere with the sanitary requirements of the immediate neighbourhood.

Now if a house or any other building is so situated that it stops the ventilation of some other building, or makes it, or helps to make it, in a condition unfit for human habitation, or dangerous, or injurious to health, proceedings may be taken to have it removed.

So also proceedings may be taken where a building prevents proper measures from being carried into effect for remedying any nuisance injurious to health, or other evils complained of in respect of other buildings.

I shall take leave to follow the Housing of the Working Classes Act, 1890, in denominating buildings which are the cause of unhealthiness in others by the name of **obstructive buildings**.

The proper person to take action about an obstructive building is the Medical Officer of Health, if he finds on inspection that the building is obstructive in the sanitary sense; the Medical Officer of Health may be set in motion by complaint issuing from four or more inhabitant householders of a district—just as in the case of an unhealthy house.

On receiving complaint, the Medical Officer of Health is bound to make inspection; and if he should make inspection either voluntarily or on complaint of four householders, and should find the building obstructive, he ought to report to the local sanitary authority to that effect. Then the local authority goes into the question as to what the building is and all about it, and how much it would cost to pull it down, and how much it would cost to acquire the land on which it stands.

If they resolve to go on with the matter they **give notice to the owner** of the obstructive building. The notice tells him that they have passed a resolution set out herewith. It also specifies that a meeting will be held at such-and-such a time and place, at which he may attend and state any objections he has to his place being pulled down. Suppose he attends and his objections are not thought to be very cogent, so that in any case the order is made to pull the place down.

In the first place, if the owner of the obstructive building thinks the local sanitary authority has gone wrong, and is doing him an injustice, **he may appeal** to Quarter Sessions, and ultimately to the High Court, against the demolition order. Suppose, however, he does not object, or does not appeal, or his appeal is disallowed, then comes the important question of **HOW MUCH COMPENSATION HE IS ENTITLED TO.**

Of course, in a case like this, where the owner is really not in fault, he is in quite a different position from the owner of an unhealthy dwelling-house. The owner of the unhealthy dwelling-house is not entitled to any compensation for the compulsory pulling down thereof. The owner of a building merely obstructive is entitled to compensation. He can take his choice whether or no he makes the local authority buy from him the whole of the property, by which I mean both the building and the land that it is on. If he desires to keep the land he must elect to pull the building down himself.

The way it comes about is that the local authority gives what is called a **"notice to treat."** The "notice to treat" tells the owner of the obstructive building that the local authority intends to purchase his place, and asks him to send in a statement of the compensation he requires and what interest he has in the building. I mean, he must say whether he is merely a leaseholder, or whether he is a freeholder, or a mortgagee who has gone into possession, or the life tenant, or whatever he is. If he cannot come to an agreement with the local authority as to the amount of compensation to be paid to him, he must be prepared to submit his case to arbitration. If the compensation does not exceed £50 it may be settled by two justices; if it does exceed £50 it must be settled by the arbitrator or arbitrators in the manner alluded to in the previous chapter.

When I said that the property-owner can compel the local authority to take the whole of his premises, I merely mean that he can refuse to let them merely demolish the building and leave him with the land on his hands. Unless he chooses **to retain the land**, they must buy it from him. But he is not entitled to make them take the whole of his premises in the sense of making them take the whole of the building. Suppose, for example, a man has a huge factory of which one end, the wall, is declared to be an obstructive building. It is finally settled that the building is obstructive, and that it has to be pulled down. Now it might be not only inordinately expensive, but inordinately foolish, for the local authority to purchase the whole of the factory. It will probably be sufficient for them to take a piece off the end thereof; and in such a case they can give

notice that they intend to purchase only the piece of land on which the part of the building is that is said to be obstructive. That is to say, they may simply take a six-yards measure from the boundary, and purchase that and all that is on it.

Now if by making the manufacturer sell this bit of ground they put him to inconvenience as to the rest of his place, then they must pay him what are called damages for severance. "Damages for severance" is a term which illustrates the fact that if I have a piece of land three acres in extent which is worth 5s. a square yard, and you take one acre of that land, leaving me the other two, the remaining two acres may become worth only 4s. a square yard. Take, for example, the case of a man who has a piece of land twenty feet deep and fronting for twenty yards on Piccadilly. The whole land is worth a good many pounds per square foot. But if you make him sell to you the whole frontage of a depth of ten feet, the ten feet at the back become of very little value.

Therefore, in the case of pulling down an obstructive house or building, when the property-owner really suffers damage by being compelled to pull down part of his building or with part of his land—when, I say, he actually suffers damage to the rest of his holding—he must be paid not only the value of the piece of land taken or the part of the building pulled down, but must be further compensated for the **diminution in value or convenience** of the rest of his property. But where he does not in fact suffer any loss or damage which could be assessed in money, he is not entitled to any compensation.

Let it be clearly understood that the owner of the obstructive building is not bound to sell the land upon which the building is. But if he wants to save the land for himself, and not to part with it, as soon as he gets notice that the local authority has declared his building to be obstructive, he should promptly give them notice that he desires to retain the land. He must at the same time give the undertaking either that he himself will pull the building down, or will permit the local authority to send their people to do it.

There is another side to this question of the demolition of obstructive buildings. It will very likely happen that by the pulling down of the whole or part of such an obstructive building, a very great addition will be made to the value of the buildings or houses with which the obstructive building interfered. Thus, if I have a row of cottages situated in Blank Street, and at the very edge of the boundary, within a foot or two of the walls of the cottages, someone has come and put up a big shed or stable, or something of that kind, having a dead wall which entirely blots out the light from the back windows of my cottages, it may be that some fine day the local sanitary authority orders the owner of this wall to pull it down. If he is compelled to demolish his wall, it is easy to be seen that my cottages become ever so much more valuable. And the Act of Parliament allows the arbitrator who is settling the amount of compensation to be paid to the person whose building is pulled down, to lay a portion

of the burden on the owners of the property which has been improved by the demolition. That is to say, my neighbour Jones's wall having been demolished because it was obstructive to the health of my cottages, and my cottages being almost doubled in value on that account, I must pay something towards what it cost to get rid of Jones's wall. This seems fair enough, and is probably the thin end of the wedge of "**betterment.**" As a matter of fact, it may be said that the principle of betterment is a very old one, having been applied by Sir Matthew Hale so long ago as the Great Fire of London.

The compensation payable to a property-owner in respect of the demolition of an obstructive building is settled in the usual way—by arbitration ; and so much compensation as is declared payable by neighbouring property-owners is to be treated as private improvement expenses.

PRIVATE IMPROVEMENT EXPENSES.

The words at the top of this section have occurred pretty frequently in the course of our investigations into the rights and duties of public authorities and property-owners with regard to works of a sanitary nature. Let us see what Private Improvement Expenses are, and how it affects a property-owner to know what they are and how they are enforceable.

When the Public Health Act was passed in 1875, it was seen that a great many works would be required to be done by, or at all events done at the expense of, property-owners who might not have the ready cash wherewithal to pay. The great bulk of the property in the country belongs to small holders. Take the case of the London suburbs—such as Croydon, Hornsey, Harrow, and so on. In places of this kind there are a large number of people who have moderate incomes—from £300 to £1,000 a year. And it is a regular practice for these people to buy their houses. Sometimes they do it through building societies. Sometimes they save a little money and borrow the rest on mortgage at about 4 per cent.—a much cheaper proceeding, if the house is good, than the payment of rent. Now suppose a person of this kind is suddenly called upon by the local sanitary authority to execute private street works, or drainage works, or to put in some new kind of sanitary arrangement into his house. A man with £400 a year cannot be expected to find £70 or £80 to lay out in new drains. Therefore a system was devised of making the money payable by instalments. That is to say, if the work is eventually to be done by the local authority, it is charged against the owner of the property for the time being and is made a charge upon his house. I will give you now the list of the things which are chargeable as private improvement expenses.

(a) Expenses of sewerage, levelling, paving, metalling, flagging or channeling, or providing means of lighting to streets not repairable by the inhabitants at large, and all other private street works. This applies to urban districts only.

(b) The construction of drains from houses hitherto not drained, to connect them with sewers.

(c) The construction of new sewers to receive the drains of two or more houses. This only applies to the cases mentioned on p. 1633, where greater expenses would be incurred in causing the drains to empty into an existing sewer than to construct a new sewer. The construction of sufficient water-closet, earth-closet, or privy and ash-pit accommodation when there is not sufficient accommodation of that kind. This also applies to cases where conveniences of the kind named have been used in common by the occupiers of more than one house, and the local authority has required the owner to furnish separate accommodation for each house.

(d) Where work is to be done by the local authority to abate a nuisance from a drain, water-closet, privy, ash-pit, or cesspool, written application having been made to the local authority complaining of the nuisance.

(e) The expenses incurred by a local authority in abating a nuisance arising from a single private drain which runs into a public sewer from two or more houses belonging to different owners. This only applies where part three of the Public Health Act, 1890, has been adopted in the district.

(f) The expenses incurred in furnishing a proper water supply to any house within the district which has been reported by the district surveyor to be without a sufficient supply. This includes merely the laying of pipes, furnishing of taps, and so on. The water supply is to be charged for in the usual way by a water rate.

(g) Such part of compensation payable to the owner of an obstructive building as is declared by an arbitrator to be properly chargeable upon premises benefited by the removal of the obstruction.

With regard to sums of money expended under the Public Health Acts which are under the category of private improvement expenses, the local authority may, after declaring such expenses to be private improvement expenses, repay themselves by **levying a private improvement rate** on the property. A private improvement rate simply means that the local authority calculates how much the works have cost, and makes the amount payable with 5 per cent. interest by instalments extended over thirty years. It may make it less than thirty years if it pleases. This rate is levied, as all other rates are, on the occupier of the premises. But if at any time the premises are unlet and unoccupied, the rate is leviable upon the owner of the premises.

But although the occupier pays the private improvement rate to the local authority, the owner has to pay most of it in the end. If the occupier is a person who pays or has agreed to pay to his landlord a rack-rent (full rent), the **occupier is entitled to deduct three-quarters** of the amount paid by him from the rent payable to his landlord. If he is a tenant at some rent less than the rack-rent, he shall deduct the amount which bears the same proportion to three-quarters of the rate as his rent bears to the rack-rent. Thus, let us suppose that I am your tenant at a rent of £40 per annum. A private improvement rate is levied upon me amounting to £4 per annum. I can deduct from the rent, when I pay you, £3 per annum. But suppose the value of the house being £40, you are letting me

have it, for some reason or other, at £20. I now have to make out a sum under the rule of three:

$$\text{As } \begin{matrix} \text{£} \\ 40 \end{matrix} : \begin{matrix} \text{£} \\ 20 \end{matrix} :: \begin{matrix} \text{£} \\ 3 \end{matrix} : x$$

If you work out the sum you will find that x is £1 10s. Now it may happen that you yourself are not the freeholder, but only a leaseholder at a ground-rent. I pay you a rent of £40 a year, and you pay to Brown a rent of £5 a year. Now if your lease from Brown is a lease with twenty years to run or more, you, when you pay Brown, may deduct a proportionate part of the private improvement expenses from the ground-rent. Thus, the rent payable to you being £40, and the amount deducted from it £3, you find how much you can deduct from the ground-rent by another rule of three sum:

$$\text{As } \begin{matrix} \text{£} \\ 40 \end{matrix} : \begin{matrix} \text{£} \\ 5 \end{matrix} :: \begin{matrix} \text{£} \\ 3 \end{matrix} : x$$

If you work this out you will see that x comes to 7s. 6d. So the improvement rate goes on. Every person who receives rent and has in his turn to pay rent for the same premises, may, if he holds them under a lease of twenty years unexpired, deduct a proportion of the private improvement rate.

If the owner or occupier of property does not care to be bothered with the private improvement rate, he is quite **at liberty to redeem** it by paying to the local authority the expenses of the works in respect of each rate as levied. He can do this at any time, even after the rate had begun to be paid. Thus, if he has paid an improvement rate for two years, he is entitled to come in to claim and redeem all payments actually expenses, *plus* interest for two years 5 per cent., *minus* the two years' rates already paid.

To take an instance, suppose the actual cost of the improvement was £80, and he has already paid £8, he will be liable to pay the further sum of £80.

							£	s.	d.
Cost of improvements	...	...	...	...	...	...	80	0	0
Two years' interest at 5 per cent.			...	...	...	...	8	0	0
							88	0	0
Less £8 already paid	..	...	...	...	...	...	8	0	0
Amount for which the rate can be redeemed	...				...	...	80	0	0

I want you to notice that although as between the sanitary authority and the owner, the owner may be responsible for the expenses of private improvements, yet it may be that as **between landlord and tenant** the tenant is liable. As to whether the tenant is liable or not is a matter entirely dependent upon the agreement between himself and his landlord. It has been held that a mere agreement by a tenant to pay all taxes, rates, assumptions, impositions in respect of the premises does not make the tenant liable to pay the improvement rate.

Private improvement expenses are not the only kind of expenses for which an owner may be liable. They are merely distinguished by a separate name from the other expenses which he is liable to pay, because they are the only expenses which may be made the subject of a private improvement rate. They may also, however, be recovered, and **all expenses for which the owner is liable may be recovered** from him in the same way as any other debt. But in addition to this, the local authority has a charge upon the premises of the owner for the amount. As I have already explained, I mean by "charge upon the premises" that the local authority holds the property as a security for the amount. And not only does it hold the property as security for the amount actually spent, but also for 5 per cent. interest on the same. The interest does not begin to run until the local authority has given the property-owner notice and made a demand upon him in writing for the money considered to be due.

Before we go any further I want to clear up a point upon which I have been asked a good many questions, and which seems to be the sort of point that arises. I may, perhaps, put the point in the form of a question. **When property changes hands, who is liable for the expenses?** To illustrate what I mean:—

Let us suppose Brown to be the owner of a row of houses which have no sufficient water supply and no sufficient sanitary accommodation. The local sanitary authority served notice on Brown, as owner of the cottages, to connect his houses with the water main, and to put in proper water-closets for each tenant. This notice, let us suppose, is served on the 1st of January. Brown, unwilling to do all this work, speedily sells to Smith. Smith does not ask whether any notice has been served from the sanitary authority, and Brown never tells him. The local authority, seeing that the required works have not been executed within a reasonable time, suddenly puts in an appearance by means of a gang of navvies, and in a day or two the row of cottages looks as though every house was being wrecked. Smith now takes alarm and goes to Jones, and sells the cottages to Jones. Let us suppose this is on the 1st of March. Jones finds the property rather too much for him. He has bought it without making an inspection and simply on the evidence of the rental value of the property. When Jones finds what has happened, he also sells. Let us suppose he sells on the 1st of June. But on the 24th of May the local sanitary authority had finished both the water supply and the sanitary accommodation for the cottages. On the 1st of June, as I have said, Jones sells to Alexander. On the 1st of July Alexander receives notice from the local sanitary authority enclosing a very pretty little bill for the price of the improvements which they have recently effected in the cottages.

Is Alexander bound to pay this? If not, who is? Must Brown pay it, who was the owner when the trouble began? Or Smith, who was the owner when the pickaxes were first put in? Or Jones, who was the owner when the last navvy withdrew from the premises?

The answer is that you must look for the man who was **the owner when**

HOME-MADE AGREEMENT FOR THE SALE OF A BUSINESS.

Stamp
6^d

An Agreement made the 9th day of May 1902 Between
Albert Fries of 12 Latis Street Slorum, grocer, of the one part and
Podson & Japhet of 7 Crown Row Slorum, Auctioneers whereby
it is agreed

1. Albert Fries appoints Podson & Japhet his agents to sell his shop N^o 12 Latis Street and the business of a grocer carried on there by him, with all stock in trade fixtures and trade effects on & about the said shop & the goodwill of his said business.
2. The price is to be not less than £1200
3. Podson & Japhet shall be entitled to a commission of 2½ per cent on the price up to £1200 and 5 per cent on anything obtained by them above £1200
4. No commission or other remuneration shall be payable unless & until the said shop & business are actually sold to a person introduced by Podson & Japhet and the price has been paid by the purchaser
5. Podson & Japhet shall not enter into any contract with a proposed purchaser on behalf of Albert Fries except a written contract and such written contract shall first have been approved by Albert Fries or his solicitor

Witness to the signature of the
said Albert Fries.

Georg Posinger

12 Latis Street, Slorum

Grocer's Assistant

Albert Fries.

Witness to the signature of
Podson & Japhet

Augustus Asperake

7 Crown Row, Slorum

Clerk.

Podson & Japhet
per Jeremiah Japhet

the works were completed. The works were completed on the 24th of May. Now Jones was the owner from the 1st of March to the 1st of June; therefore, Jones is liable to pay the improvement expenses. On Jones the demand for payment must be served. Please understand I am not now dealing with the charge upon the premises, but only with the personal liability of the owner. It may be that the local authority does not intend to enforce the personal liability, but to rely upon its security. But in many cases the local authority prefers to get its money down, and tries to get its money down, if it thinks the person liable in a position to pay. That is no doubt the duty of the local authority. Now if the local authority in this case intends to try to get the money straight away out of anybody, they can only get it out of Jones. To do this, they must serve a notice upon Jones demanding payment. And if he does not pay, they must take action against him within six months from the time they served the notice. It should be noted that the demand must in fact be a demand. It must contain a request for payment. It is sufficient, however, if the local authority sends to Jones an account of the expenses incurred with a note like this: "Unless the amount of this account is paid within fourteen days after delivered, interest at the rate of 5 per cent. per annum will be charged therefor until fully liquidated."

If the demand is for less than £50 it can be recovered in a County Court. Otherwise it may be recovered by summary proceedings before the magistrates. I would have you note that Jones is bound by the amount apportioned as his share of the expenses by the local surveyor, unless perchance he has within three months of the serving of the notice objected to the amount. You see, therefore, it is most important,² if you are under a liability to pay any part of expenses incurred by a local authority in improvement, for you to take action pretty promptly after the demand note and account are served on you. Do not take refuge in inaction; go into the account properly. Employ the assistance of a surveyor, if necessary; and within three months give notice to the local authority that you intend to dispute the amount laid to your charge. Observe, I am merely alluding to a case where you are liable to pay whatever is due, and are only **disputing as to the amount** of what is due.

The local authorities have, however, another remedy. They may not only bring an action to recover their money against the person who was owner of the property when the improvements were completed; they may take refuge in one of two other courses. The first is that by an order they may declare the expenses to be payable by instalment, spread over thirty years, the instalments to include 5 per cent. interest. Now this is different from the case of a private improvement rate. It is quite true that any of the instalments here mentioned may be got out of the occupier or the owner. But they cannot be obtained in the same way as a rate. I dare say you know that rates may be distrained for. That is to say, that the local authority has the same power as to rates as a landlord has with regard to rent. So that in the case of private improvement expenses where a private improvement rate is declared, the private improvement

rate may be extracted from the tenant by means of distress upon his furniture.

In the case of other expenses which have simply been declared payable by instalments, the local authorities can take their choice. They can either make the tenant pay, or the owner. If they compel the tenant to pay, he may deduct from his rent the amount so paid—or, rather, three-quarters of the amount—in exactly the same way as I have shown with regard to private improvement rate on pp. 1670–1.

Now let us come to this charge on the premises. This charge is a method by which the local authority may extract the money from the property itself. It is not concerned with the personal liability of the owner or various owners of the property. It is simply a means by which the property itself can be made to pay the debt. Thus, if the amount of expenses payable by an owner of property should not be paid by him, the local authority may take proceedings to enforce the charge in the following manner :—

They may procure the appointment of a receiver of the rents on the property. This receiver will then **collect the rents**, and hand them over to the local authority until the debt is paid. Or they may, if they please, obtain an **order from the Court to sell** the property, and deduct the debt out of the money realised thereby.

Let us suppose that you have purchased property which had some work done to it by the local authority, the expenses of which are a charge upon the premises. You bought and became the owner some months after the work was finished. You know nothing about it having been done. Some fine day you find yourself served with a writ from the local authorities, which informs you that they are seeking to endorse a charge upon your premises. Now you are not personally liable, as I have said before. The man who sold the property to you was a man who at the time the work was completed was quite well able to pay the expenses to the local authority. The local authority simply does not trouble to make him pay. Is that any reason which you can allege for the purpose of showing that you ought not to be made to pay? The answer is that the negligence of the local authority in not enforcing the debt against the then owner personally is no reason in law for depriving them of their charge on the premises. The following expenses are expenses which owners of premises are liable to pay if those expenses are incurred by local authorities :—

The drainage of houses; construction of water-closets, earth-closets, privies and ash-pits; the demolition of buildings over sewers—if unauthorised by the local authority.

The same with regard to vaults, arches, or cellars under carriage-ways, made without the authority of the Council.

The abatement of certain nuisances—namely, nuisances arising from keeping swine, or a pigsty in any dwelling-house, so as to be a nuisance to any person; suffering waste or stagnant water to remain in any cellar or place within a dwelling-house for twenty-four hours after written notice, or allowing the contents of any water-closets, etc., to overflow or soak therefrom. These nuisances only apply to urban sanitary districts.

The removal of any accumulated manure, dung, soil, or filth, or other offensive or obnoxious matter.

The provision of a proper water supply to every house.

The cleansing of any polluted well, tank, or cistern used, or likely to be used, for drinking or domestic purposes, or for manufacturing drinks for the use of man.

The abatement of nuisances which are declared to be nuisances by the sanitary authorities.

The reasonable costs and expenses incurred in making a complaint or giving notice of a nuisance, or in obtaining an order of the Court in relation to the nuisance, or in carrying the order into effect.

Expenses of cleansing and disinfecting a house for the prevention of infectious disease. This only applies where the owner has been served with a notice to cleanse and disinfect and has neglected to obey.

Sewering, levelling, paving, lighting, etc., private streets—by which I mean streets not repairable by the inhabitants at large.

The removal of works made contrary to bye-laws—for example, any works of which a plan ought to be submitted to the local authorities before the same are commenced, and of which no plans have been submitted.

The like with regard to the removal of projections in front of houses; making doors which open into streets open inwards into the house.

The removal or securing of dangerous buildings.

The construction of coverings to vaults.

The removal of obstructions, and the dealing with dangerous buildings.

A POINT OF LOCAL GOVERNMENT LAW.

I am writing this note because I have frequently been asked the question to which it is the answer. It frequently happens that local bodies wish to enter into schemes of improvement—or alleged improvement—for which they desire to purchase land compulsorily; and to enter upon works which, however great a blessing they may be to the town at large, are not an unmixed boon to the people in the immediate neighbourhood. Take the case of a Town Council wishing to erect stables for the horses used in the tramcar service, or a destructor for the consumption of the dust and rubbish of the municipality. If a piece of land has to be purchased for the purpose, the Council will be obliged to serve a notice of the kind mentioned in a previous chapter, asking the owners of the land whether they are willing to sell—or, what is the same thing, whether they do or do not assent to the proposal. They must also advertise the scheme in the local papers. Then is the time for opponents of the improvement to come in. They should draw up a memorial to the Local Government Board, in which they should set out the scheme proposed, and that they, the memorialists, object to it. The grounds of the objection should be succinctly set forth—*e.g.*:—

“We object to the scheme because (*a*) the proposed stables would be “situated in the midst of a thickly populated district, where they

"would be a nuisance; (b) the land proposed to be taken is very costly, and there are plenty of suitable sites in the borough that can be bought for half the money."

On this, the Local Government Board will probably order an inquiry to be held; and then you, the objectors, can appear before the inspector of the Local Government Board and give evidence in support of your objections. You will probably find it better to employ a solicitor and a barrister to argue the matter for you.

But let me warn you that opposition to a scheme proposed after grave consideration by the Council is not likely to succeed. Sometimes it does—in my experience generally when it is shown that some private interest will be adversely affected to such an extent as to inflict considerable and irreparable loss on some one or more individuals, such loss being "considerable" in the pecuniary sense.

INDEX.

- Adulteration, absence of guilty intent usually no defence, 1208
- " appeal against conviction, 1248
- " " to Board of Agriculture, 1223-4
- " " to Local Government Board, 1223-4
- " Bread, of, 1284-91
- " " lawful ingredients, 1285
- " " Liability of fraudulent servant for, 1290-1
- " " of journeyman for, 1286
- " " obstructing inspector, 1287
- " " with alum, 1285
- " Butter, of, sample without payment, 1260
- " certificates of analyst, irregular, 1242-4
- " Coffee, of, 1281-4
- " defence in margarine prosecution, 1260-2
- " " of "unworthy servant" in margarine prosecution, 1262
- " guilty intent, proof of, in cases of, 1208
- " importer of unmarked margarine, penalty on, 1257
- " inspector cannot be asked to produce authority, 1227-8
- " " may employ agent, 1226-7
- " " must be served as he demands, 1228
- " " must use certain words, 1229
- " Inspector's right to be served, 1229
- " Margarine Act, proceedings under, 1259-65
- " " dealer to keep register, 1258
- " " invoice a protection, 1260-1
- " " packages to be marked, 1259
- " " penalties, 1264
- " " refreshment-houses, sold in, 1265
- " " sample taken in course of transit, 1258
- " " to be consigned as such, 1258
- " meaning of "forthwith," 1229-30
- " Milk, of, 1266 *et seq.*
- " " Condensed, 1270
- " " each can a separate offence, 1269
- " " Government standard not conclusive, 1274
- " " machine-skimmed, 1270
- " " notice "Not guaranteed," 1276
- " " sample in course of delivery, 1269
- " " skimmed, 1270
- " " standard of, 1273
- " " taking samples of, 1268-9
- " " warranty of goodness of, 1270
- " notice of analysis by inspector, 1229
- " personal innocence usually no defence, 1208
- " " when a defence, 1208
- " proceedings in prosecution, 1225-47
- " prosecution by private person, 1244-7
- " " by public officer, 1226
- " " Defences to (*see* LABEL, NOTICE, WARRANTY)
- Adulteration prosecution, defences as to form, 1207-8
- " " Government analysis, Demand for, 1240
- " " Government analysis not conclusive, 1241
- " " time limit, 1235
- " " " in false warranty cases, 1216
- " " who may institute, 1225
- " public analyst's certificate, form of, 1242-4
- " " not conclusive, 1242-3
- " Punishment for, 1247-8
- " purchase of sample for test purposes, 1225-34
- " sample, by whom to be analysed, 1234
- " " refusal to sell, 1214
- " " taken in course of delivery, 1231-3
- " " " when purchaser's consent necessary, 1232
- " " taken in shop or other place, 1229-31
- " " to be divided in the shop, 1221
- " servant to blame, when a defence, 1209
- " shopkeeper not obliged to open tin or packet, 1214
- " Tea, of, 1281-4
- " " " with exhausted leaves, 1284
- " " " other leaves, 1282
- " " " spent leaves, 1282
- " test sample must be analysed, 1233-4
- " what to do when prosecuted, 1236-44
- " wholesale merchant, by, 1209-25
- " wholesaler and retailer, questions between, 1209-25
- " (*see also* RETAILER, WHOLESALE MERCHANT)
- Advertisements on hoardings, 1652
- Alum in bread, 1285
- Animal, diseased, What is, 1525
- Animals, Definition of, 1525
- " Diseased, 1524-45
- " " and slaughtered, how valued, 1538-9
- " " " valuation (Scotland), 1540
- " " Area infected by, 1530
- " " B. of A. may order slaughter of, 1532
- " " Disposal of carcasses of, 1534
- " " Forfeiture of compensation for slaughtered, 1533
- " " Inspector may enter and search for, 1542
- " " markets, fairs and sales prohibited because of, 1530
- " " Notice to be given to police of, 1525
- " " or suspected, Exposure of, 1536
- " " Penalties in respect of, 1543-5
- " " Places infected by, 1526
- " " " how treated, 1529
- " " Power of inspector as to, 1541-3

Animals, Diseased, Powers of police as to, 1541-2
 " " Regulations of B. of A. as to, 1534-5
 " foreign, Regulations as to importation of, 1540-1
 Appeals from L.G.B. arbitrator, 1660
 Arbitration on compulsory sale of land, 1601
 " in improvement scheme cases, 1659
 Area, insanitary, Clearing of, 1654 *et seq.*
 Arsenic (*see* POISONS)

B

Bagatelle licence, included in billiard licence, 1417
 Bakehouse, Alteration of, by order of magistrate, 1576
 " Fine for insanitary condition of, 1576
 " insanitary, Definition of, 1575
 " Limewashing, painting, and varnishing, 1576
 " Regulations in respect of, 1576
 " retail, Definition of, 1577
 " Sanitation of, 1575
 " Sleeping-rooms near, 1577
 " Ventilation of, 1577
 " Washing of, 1576
 Baker (*see* BAKEHOUSE, BREAD)
 Beer-barrel wrongly marked, 1343, 1350
 Beer-dealer's additional licence, 1397
 Betting-house, Definition of, 1482
 Betting-houses Act, Application of, 1481-3
 Betting-man using licensed premises, 1482
 Billeting of soldiers on publicans, 1499-1500
 Billiard licence, Application for, 1417
 " " holder not to sell excisable liquors, 1418
 " " holder permitting unlawful games, 1418
 " " included in full licence, 1417
 " " No appeal from refusal of, 1417
 " " renewable yearly, 1417
 " " subject to conditions, 1418
 " room, Hours of keeping open, 1418
 Board of Agriculture, enforcing Adulteration Acts, 1224
 " " Powers of, as to cattle plague, 1527

Book canvassers, when not pedlars, 1559
 Bread Acts, The, 1374-80
 " Adulterated (*see* ADULTERATION)
 " cart, when to carry scales, 1376-7
 " Fancy (*see* below, FRENCH)
 " French, need not be weighed, 1378
 " " What is not, 1378-9
 " " when to be weighed, 1380
 " (Scotland) to be marked with weight, 1377
 " Sellers of, must have scales, 1375-6
 " sold from cart, 1376
 " " by weight, 1375
 " weighed by seller, 1375
 Brewer to keep weights and measures, 1384
 Builder must take precautions during building, 1651
 Builders' hoardings and the local authority, 1651
 " " (Scotland) and the local authority, 1653
 Building bye-laws in England, 1579
 " " (Sc. burghs), 1588-9
 " Dangerous, 1648
 " " Expenses of fencing off, 1649
 " " notice to repair, 1648
 " material not to be left about, 1652
 " meaning of word, 1603
 " " (London), 1604

Building, meaning of word (Scotland), 1603-4
 " No foundations necessary to constitute, 1603
 " Obstructive, 1666
 " " Compensation for demolition of, 1667
 " " Demolition of, 1666
 " operations, Hoarding to be erected during, 1651
 " " Precautions during, 1651
 " plans (Sc. burghs), Contents of, 1587
 " " " Dean of Guild to approve, 1587
 " " (Scotland), Time for approval of, 1588
 " regulations, 1578 *et seq.*
 " " Local Acts as to, 1578-9
 " " (Scotland) rural districts, 1589-90
 " ruinous, Local authority may deal with, 1648
 " " (Scotland), belonging to different owners, 1650-1
 " " (Sc. burghs), Compulsory demolition of, 1650
 " " (Scotland), Owner liable for, 1650
 " " (Sc. burghs), Procedure in respect of, 1650
 " new (Scotland), Rules as to, 1587-8
 Building line, application to additions, 1594
 " " depends on first house, 1591
 " " governed by bye-laws, 1591
 " " law of England (urban districts), 1590-6
 " " Liability to set building back to, 1599
 " " (London), Law of, 1596
 " " " When building may be forward over, 1597
 " " " when house rebuilt, 1597
 " " of corner house, 1594
 " " Penalty for building beyond, 1595
 " " (Scotland), Liability to set building back to, 1600-1
 " " Scottish burghs, 1597-9
 " " to what buildings not applicable, 1592-3

Burgh Police Act (Scotland), not applicable to certain towns, 1586
 Burghs, Scottish, Sanitary authority in, 1293
 Butcher, Scottish, may have animal inspected before killing, 1319-20
 " (*see also* SLAUGHTER-HOUSE)
 Butter Association, The, 1225
 " Definition of, 1250
 " (*see also* ADULTERATION, MARGARINE)

C

Cattle dealers (*see* below)
 " Definition of, 1525
 " Diseased (*see* ANIMALS)
 " fair prohibited by Board of Agriculture, 1530
 " in dairies, Rules as to, 1550
 " market prohibited by Bd. of Agriculture, 1530
 " markets and fairs, Weighing of cattle at, 1386
 " moving about infected area, 1530-1
 Cattle plague, 1536
 " " Area infected with, how dealt with, 1527
 " " compensation for slaughter, 1528
 " " Places infected by, 1526
 " " Slaughter of beasts infected with, 1528
 Charging order on house-property, 1664
 Cheese (*see* MARGARINE-CHEESE)

Cheese, What is, 1250
 Chemist (*see* POISONS)
 " and druggist, 1325-33
 " " who may use title, 1325-6
 " employing unqualified assistant, 1326-7
 Coal, above 2 cwt., Sale of, 1359
 " Bye-laws as to weighing, 1367-8
 " delivered at place of sale, 1367
 " delivered in sacks, 1364
 " hawkers, Regulations as to (Scotland), 1372
 " retailed in small quantities, 1367
 " retailers, Regulations as to (Scotland), 1371
 " Re-weighing of, 1366
 " Sale of, in London, special law, 1372-4
 " " place of, open to inspection, 1368
 " sold by weight, 1358
 " " (Scotland), 1370
 " ticket, Contents of, 1359
 " " Form of, 1370
 " " in Scotland, 1371
 " " may be given to servant, 1361
 " " of weight to be delivered, 1359
 " " to be signed, 1365
 " " when coal delivered in sacks, 1364-5
 " " when to be delivered, 1361-3
 " " when to be filled up, 1363-4
 " vehicle carrying weighing machine, 1368
 " " may be stopped in the street, 1368-9
 " " (Scotland) may be weighed by constable, 1371
 " Weighing, empty sack on weight side, 1345-6
 " When legal to sell by bulk, 1358-9
 Cocoa, when to be labelled a mixture, 1205
 Coffee (*see* ADULTERATION)
 " and chicory, notice posted in shop, 1203
 Compensation for demolition of building, 1667
 " for property purchased for improvement scheme, 1655-8
 " for wrongful seizure of food, 1305-6
 Compulsory sale of land, 1601-2
 Condensed milk, Importation of, 1278
 Contagious Diseases (Animals) Act, 1524-45 (*see also* ANIMALS)
 Cowkeeper, Law relating to, 1546-50
 " Registration of, 1548

D

Dairies, 1546-50
 " closed by justices' order in case of disease, 1547-8
 " Inspection of, on suspicion of disease, 1546
 " Local regulations for, 1550
 Dairyman, Registration of, 1548
 " prohibited from selling milk in certain districts, 1546-7
 Ditch may be a sewer, 1627
 Drain, Connection of, with sewer, 1634
 Drains, Alteration of, 1632
 " Bye-laws as to, in rural districts, 1631
 " " " in urban districts, 1630
 " " " (Scotland), 1631-2
 " Connecting, with sewers, 1633
 " Definition of, 1623
 " disconnected by local authority (Scotland), 1635
 " House constructed without, 1632
 " houses belonging to different owners, 1624-6
 " " " same owner, 1626
 " " new, of, 1630

Drains injurious to health, 1637
 " inspection of, 1636
 " " before covering, 1637
 " Law of, 1623 *et seq.*
 " Nuisance arising from, 1637
 " opened for repairs, 1638
 " Opening up, powers of local authority, 1636-7
 " Private branch, 1634
 " Repairing, 1638
 " (Scotland), Inspection of, 1638
 " (Sc. Burghs), 1634 *et seq.*
 " "single private," Owner liable for, 1624-5
 " Surveyor to inspect, 1638
 " unsuitable for local system, 1635
 " when local authority bound to relay, 1635-6
 Druggist (*see* CHEMIST)
 Drug stores, when legal, 1325-6

F

Fair prohibited when diseases of animals exist, 1530
 " regulations as to diseased animals, 1534-5
 Farmer (*see also* CATTLE)
 " appealing to Board of Agriculture as to declaration of infection, 1527
 " relations with officials, 1541
 Food, Hawker of, needs no licence, 1565
 " Unsound (*see* UNSOUND FOOD)
 Foot-and-mouth disease, circle of infection, 1531
 " " " infection, declaration of, 1529
 " " " Outbreak of, 1534
 " " " rules as to removal of dung, fodder, etc., 1536-7
 Foreigner giving warranty with goods, 1203-4

G

Game dealers' licences and rules, 1551-2
 " definition of, 1551
 Games of skill, 1481
 " Unlawful, 1480
 Gaming in public-houses, 1480-2
 Ginger, Adulterated, 1104
 Grocer's liquor licence (*see* LICENCE)
 Guarantee (*see* WARRANTY)

H

Hawker, Definition of, 1558-9, 1563
 " of petroleum, Constable may stop, 1557
 " " " Regulations governing, 1555
 " " " Non-liability of, for servants, 1556-7
 " Rules to be observed by, 1566
 Hawker's certificate of character, 1563
 " cries, Bye-laws of local bodies as to, 1559
 " licence, Duty payable on, 1563
 " " Production to police of, 1564
 " " Renewal of, 1564
 " " when not required, 1564-5
 Hoarding during building operations, 1657
 " for protection against dangerous buildings, 1648

Hoarding, advertisements on, 1652
 Hop-bags, Marking of, 1385
 " grower to keep weight, 1385
 " pockets to be marked, 1385
 Hotel, Duty payable by, 1426
 (Scot.), What is, 1419-20 (*see also* LICENSING)
 " House," Meaning of, 1602-3
 House, demolition of, Compulsory, 1662-3
 " single, Demolition of, 1660
 " unfit for habitation, 1564 *et seq.*
 " " " Demolition of, 1661

I

Inn (*see* LICENCE, LICENSING)
 " (Scotland), Definition of, 1419-20
 Inn-keeper, Duty to travellers of, 1407
 " ejecting disorderly persons, 1500
 Intoxicating liquor, Imperial measures to be used,
 1381
 " " measures to be marked, 1381
 " " penalty for selling other than
 by measure, 1382
 " " sale by the glass, 1382
 " " " of, 1387 *et seq.*
 " " " by measure, 1381
 " " " less than half a pint,
 1392
 " " " (Scotland) 1383
 " " (Scotland), whiskey sold without
 measuring, 1384
 Invoice a defence in butter prosecution, 1260-1.

K

Knacker, certificate of fitness, 1520
 " cutting animal's hair, 1520
 " slaughtering animal within three days, 1520
 " Use of animals by, 1520-1
 Knacker's register, 1521
 " yard, Definition of, 1517
 " " Licence for, 1517
 " " Effect of, 1519
 " " Renewal of, 1520
 " " (Scotland), 1521-3

L

Label better than notice, 1207
 " no protection if actual fraud, 1204-5
 " of mixture, Conspicuous, 1204
 " protecting shopkeeper, 1204
 Land, Compulsory sale of, 1601-2
 " Purchase of, for improvement scheme, 1656
 " taken in execution, 1649
 Lessee, Position of, 1664
 Licence, Ale-house, 1398
 " Appeals against forfeiture of, 1459
 " " from refusal to renew, 1452-60
 " " Temporary licence pending, 1459
 " Application for, 1433

Licence, beer (1869), Right to renewal of, 1440
 " Beer-dealer's, 1391
 " " " off-, 1395-7
 " " " off-, 1400
 " " on-, 1399-1400
 " Billiard (*see* BILLIARDS)
 " Brewer's off-, how contravened, 1393-4
 " Canteen, 1413
 " Cider and perry, 1400
 " " off-, Refusal of, 1436-7
 " Chemists and druggists', 1398
 " confirmation required, 1438
 " " unnecessary, 1437-8
 " Convictions endorsed on, 1501-4
 " death of holder, 1390
 " Disqualification of persons to hold, 1405
 " Duty on, 1426
 " Early-closing, 1410
 " Excise, 1476
 " Forfeiture of, 1465, 1476
 " " of, on first offence, 1441
 " Full, 1398
 " " to whom granted, 1399
 " Justices', 1398, 1412
 " " disqualifications, 1457-9
 " " hearing application for, 1434
 " " discretion in renewing, 1442-3
 " Liquor, 1398
 " Music and dancing, 1413-18
 " Music-hall liquor, 1413
 " New, 1430-9
 " " Advertisement of notices of, 1432
 " " Appeals from refusal of, 1452
 " " Applicant for, must be heard, 1434
 " " Application for, 1433
 " " Objection by property-owners to, 1435
 " " Public may object to, 1433
 " Notices of application for, 1431
 " Notice of objection to, 1443
 " objector proving objection, 1444
 " Occasional, how granted, 1441
 " " Definition of, 1411-12
 " Off-, liquor consumed outside, 1467
 " On-, always granted, 1399
 " Passenger-boat, 1412
 " Provisional, 1427-30
 " " Application for, 1428-9
 " " Confirmation of, 1429
 " " made final, 1430
 " " for new premises, 1428
 " Refreshment-house, when required, 1401
 " Refusal of, 1440-1
 " " of liqueur, 1436-7
 " renewal, objection that house not wanted, 1446
 " " of, 1439-46
 " Six-day, 1407-10
 " Spirit-dealer's, 1397-8
 " Spirit-dealer's additional, 1398
 " Spirits off- (retail), Refusal of, 1436-7
 " Spirits on-, 1399
 " Sweet-dealer's, 1397
 " Sweets off-, 1401
 " " on-, 1402
 " " " off-, Refusal of, 1436-7
 " Teetotal objections to, 1434-5
 " Theatre, 1413
 " Tied beer-house, 1400
 " Transfer of, 1460-2
 " Wine (1869), right to renewal, 1440
 " " (foreign) dealer's, 1397
 " " off-, 1400-1, 1435
 " " off-, Refusal of, 1436-7
 " " on-, 1401

Licensing Regulations, etc. :—

- " Agents to sell beer, 1391
- " appeal against disqualification by owner, 1405
- " attendance of applicant, 1443
- " bankruptcy of licence-holder, 1390
- " betting men using premises, 1482
- " *bond-fide* traveller, definition of, 1490-1
- " " must consume liquor on premises, 1489
- " brothel, permitting premises to be used as, 1476
- " character of applicant, 1436
- " " of house or shop, 1436-7
- " children under 14, sale of liquor to, 1494
- " closing time, 1483
- " " hours for travellers, lodgers and friends, 1489-92
- " " of refreshment-houses, 1493
- " " of off-licence holders, 1486-7
- " club needs no licence, 1389
- " common inn, Definition of, 1407
- " communication with other premises, 1468
- " conduct of the business, 1463 *et seq.*
- " constable on duty, harbouring, 1473
- " convictions, Appeal from, 1504
- " " count after five years old, when, 1503-4
- " discretion of Justices, 1435
- " disqualification of holder on conviction, 1476
- " " of premises, 1405, 1502
- " drunkenness on licensed premises, 1469-70
- " drunken persons, treating, 1473
- " duty payable by hotels, 1426
- " " by restaurants, 1426
- " ejecting disorderly persons, 1500
- " endorsement valueless after five years, 1503
- " enlargement of premises, 1394-6
- " exclusion of people from premises, 1500
- " foreign wine, Definition of, 1397
- " forfeiture under Betting Act, 1481
- " friends of publican supplied at all hours, 1488, 1492
- " gaming on licensed premises, 1480
- " illicit sale, how proved, 1389
- " " storing of liquor, 1468-9
- " inn-keeper and travellers, 1407
- " "keeping open" after hours, 1489
- " liability of proprietor for manager, 1472
- " lodgers supplied at all hours, 1492
- " name of licence-holder to be put up, 1464
- " night-houses, 1486
- " offences by off-licence holder, 1465-8
- " prostitutes entitled to be served, 1475
- " " reputed, frequenting house, 1474
- " penalty for selling liquor on unlicensed premises, 1388
- " police power to enter licensed premises, 1496-8
- " premises disqualified by four convictions, 1502
- " " qualifications of, 1402-6, 1437
- " privileges of Vintners' Company, 1390
- " publican not bound to keep open, 1411
- " railway travelling, right to be served, 1491
- " refreshment-house, definition of, 1401
- " sale of liquor without licence, 1465
- " servant not responsible for breach of licence, 1394
- " spirits, Definition of, 1398
- " Sunday closing hours, 1485
- " sweets, Definition of, 1397
- " servant, Liability of master for, 1471
- " Serving drunken persons, 1470-1
- " thieves, Harbouring, 1477
- " trader requiring several licences, 1391-2

Licensing Regulations, etc. (*continued*) :—

- " unlawful games, 1480
- " valuation is unnecessary sometimes, 1404
- " value of premises, 1403
- " " " how calculated, 1404
- " wine licence-holders storing spirits, 1469
- " young people, Sale of spirits to, 1493-4
- Licence (SCOTLAND), Application for new, 1445-7
- " " Early-closing, 1422
- " " Forfeiture of, 1516
- " " Grocer's, 1420
- " " Inn and hotel, 1419
- " " new, Confirmation of, 1449
- " " Notice of application, 1448
- " " Objections to renewal of, 1450
- " " by whom permitted, 1449
- " " Occasional, how granted, 1421
- " " Persons disqualified from holding, 1424
- " " Public-house, 1420
- " " Renewal of, 1436-50
- " " Refusal of new, 1451
- " " Six-days, 1423
- " " Three kinds of, 1419
- Licensing (SCOTLAND) Regulations, etc., 1419 *et seq.*
- " " adulteration of food and liquor, 1507
- " " appeals, 1451-2
- " " Betting Acts, Breach of, 1511
- " " certificate for grocers and dealers, 1506-7
- " " certificate of character by J.P., 1448
- " " certificates for inns and hotels, 1505
- " " certificates for public-houses, 1506
- " " children, Sale of liquor to, 1504
- " " Closing hours for publican, 1513
- " " disorderly conduct on premises, 1508
- " " drinking on premises, What is? 1512-13
- " " ejecting disorderly person, 1516
- " " girls and boys assembling on premises, 1510
- " " good order to be maintained, 1511
- " " grocer allowing drinking on premises, 1512
- " " harbouring constable on duty, 1504
- " " hawking without a licence, Penalty for, 1424
- " " hotel lodger entitled to drink at all hours, 1514
- " " inn-keeper not to sell groceries, 1508
- " " keeping open house, 1511
- " " lodger, Definition of, 1514
- " " master's liability for servants' acts, 1514
- " " notorious persons meeting on premises, 1508
- " " offences must be charged definitely, 1515
- " " premises to be certified suitable by J.P., 1447-8
- " " prohibited hours, 1512
- " " shebeening, Penalty for, 1423
- " " " Proof of, 1424
- " " traveller, Definition of, 1513

- Licensing (SCOTLAND) Regulations, etc. (*cont.*) :—
 " " traveller may be served at hotel,
 1513
 " " unlawful games on premises?
 What are, 1510
 " (WALES) Sunday closing, 1485

M

- Margarine, 1149 *et seq.*
 " advertised under other name, 1254
 " -cheese, 1149
 " "exposed for sale"? What is, 1252, 1255
 " label on bulk, 1251
 " " on packet sold, 1252
 " " size of letters on, 1252
 " marked wrapper for, 1252-3.
 " packages ready made up, 1256
 " sample taken in course of delivery, 1232
 " Wholesale dealer in, 1256 *et seq.*
 " Wrapper for, 1253
 Market, Disinfecting, after outbreak of disease, 1535
 " prohibited when diseases of animals exist, 1530
 " regulations as to diseased animals, 1534
 " Weigh-houses in, 1385-6
 Measures (*see* WEIGHTS AND MEASURES)
 Meat, Unsound (*see* UNSOUND FOOD)
 Medicine, Dispensing of, 1332-3
 Milk (*see also* ADULTERATION)
 " Adulteration of, 1266-81
 " carts and cans, Lettering on, 1267-8
 " churn as a measure, 1342
 " Contamination of, 1549
 " delivered in several cans, 1279-81
 " Diseased, 1546 *et seq.*
 " farmers and milk-sellers, 1546-50
 " from infected dairy, 1546
 " mixed with other milk, 1277
 " notice "Not guaranteed," 1276
 " Preservatives in, 1277
 " Sample of, taken in course of delivery, 1232
 " shop not a sleeping chamber, 1550
 " Standard of, 1273-4
 " stirring, Importance of, 1275
 Miller to keep weights and measures, 1384
 Mixing goods, Danger of, 1222
 Mortgagee, Position of, 1664
 Music and dancing licence, 1413-18

N

- New building, Bye-laws relating to, 1584
 " " Definition of, 1584-5
 " " (Scotland), 1586
 " " Destruction of, by authorities, 1580
 " " Plans for, 1581 *et seq.*
 " " and local authority, 1583
 " " approval of, irrevocable, 1582
 " " depositing, 1579
 " " rejection of, 1581-2
 " " wrongful rejection of, 1581
 " " (Scotland), 1586
 " street, Definition of, 1606-7
 " " (London), Rules as to, 1607

- New street (London), sanction of L.C.C. refused,
 1610
 " " " when private, 1609
 " " " Width of, 1611
 " " (Scotland), local authorities' require-
 ments, 1610
 " " " Width of, 1610
 " " " Width of, 1612
 Notice as to milk, 1276 (*see also* MILK)
 " of mixture, as defence to adulteration summons,
 1203
 " " Customer's knowledge of, 1207
 " " posted in shop, 1203
 " Spirits watered down, 1205-6

O

- Oil (*see* PETROLEUM)
 Owner, Definition of, 1663-4
 " of property, Definition of, 1655-6, 1663-4
 " liability of private improvement, 1672

P

- Party-wall, 1639-47
 " " bye-laws, Local, as to, 1644
 " " Common ownership of, 1639
 " " Rights of owners of, 1640
 " " Damage to, 1643
 " " divided by imaginary line, 1640
 " " Houses between two, 1641
 " " London, Separate law as to, 1644-7
 " " owned by one owner, 1641
 " " ownership, Presumption of, 1640
 " " pulling down, 1641
 " " repairs to, 1644
 " " right of support for, 1642-3
 " " to lean against, 1642-3
 " " to use, 1642
 Patent medicine, may be sold by anyone, 1327
 Pawnbroker, Law of the :—
 " arresting suspected thief, 573
 " attendance at court, 1574
 " another broker's ticket, Refusal of, by, 1571
 " books to be kept, 1570
 " child under 12, dealing with, 1571
 " closing on certain days, 1571
 " Compensation to, for assisting police, 1573
 " drunken person, dealing with, 1571
 " Forfeiture of licence of, 1569
 " Law of the, 1566-74
 " licence for each shop necessary, 1567
 " licensed before, 1567-8
 " licensing of, 1566 *et seq.*
 " name to be placed outside, 1570
 " Notice before application for certificate by,
 1568-9
 " Notices in shop of, 1570-1
 " obstructing police, 1573-4
 " penalties for, 1572
 " property illegally pawned, 1574
 " purchasing article pledged, 1572
 " refusal of certain pledges, 1572
 " Refusal of certificate to, 1569
 " renewing licence, 1566-7
 " serving persons under 16 years illegal, 1571

Pawnbroker selling pledges, 1572
 „ unlicensed, Penalty of, 1569
 Pawn-ticket, Giving of, 1571
 Pedlar, Definition of, 1559
 „ Law of the, 1559
 Pedlar's licence, Applying for, 1560
 „ „ Fee for, 1560
 „ „ forfeited, 1562-3
 „ „ obtained by fraud, penalty, 1561
 „ „ Qualifications for, 1560
 „ „ refusal of, Appeal from, 1561-2
 „ „ when not necessary, 1559
 Petroleum, Definition of, 1553
 „ hawking, Regulations as to, 1556
 „ „ servant breaking regulations, 1556-7
 „ kept for private use, 1553
 „ Labelling of, 1554
 „ Licence to deal in, 1553
 „ „ Application for, 1555
 „ „ Forfeiture of, 1557
 „ „ refusal of, Appeal from, 1555-6
 „ Samples of, by local inspector, 1554
 „ Search for, 1554
 „ Seizure of, by police, 1557
 Pharmaceutical chemist, Definition of, 1325
 Pleuro-pneumonia, Infected area of, 1530-1
 „ „ Compensation for animals slaughtered for, 1532
 „ „ infection, declaration of, 1529
 „ „ rules as to removal of dung, fodder, etc., 1536
 „ „ Slaughter of animals affected by, 1532
 Poison, arsenic, Special register of, 1330
 „ „ to be coloured, 1330-1
 „ Label on, 1327
 „ Qualified persons only to sell, 1329
 „ Register for sale of, 1329
 „ Sale of, 1326 *et seq.*
 „ „ of, master responsible, 1330
 „ „ of, to known persons, 1328
 „ Wholesale dealer in, 1330
 Poisonous flesh, Use of, 1332
 „ grain, Sale of, 1331
 Preservatives in milk, 1277
 Private improvement expenses, 1669-1675
 „ „ rate, 1670
 „ Streets' Works Act, 1612 *et seq.*
 „ „ apportionment of expense of paving, etc., 1613-14
 „ „ Definition of, 1612
 „ „ Liability for paving, etc., 1613-14
 „ „ objections to plans of local authority, 1614-18
 „ „ Paving and sewerage, 1612
 „ „ Property-owner's liability to maintain, 1619
 „ „ Taking over of, by local authority, 1620-1
 „ „ works which local authority may require, 1612 *et seq.*
 „ „ (Sc. burghs), Powers of local authority as to, 1621
 „ „ „ Taking over of, by local authority, 1622
 Property (*see* LAND)
 „ insanitary, Demolition of, 1654 *et seq.*
 Proprietary medicines, Definition of, 1327
 „ „ Poisonous, 1327-8
 Publican bound to "billet" soldiers, 1499-1500
 „ can choose his customers, 1500
 „ Measures used by, 1340
 (*See also* LICENSING)

R

Ratepayers, Complaint by, of insanitary area, 1655
 Refreshment-house (*see* LICENSING)
 „ „ keepers and Margarine Acts, 1265
 Restaurant liquor licence duty, 1426
 Retailer, Adulteration questions affecting the, 1209-20
 „ remedy for adulterated goods, 1217-23
 „ suing merchant on verbal warranty, 1219-20
 „ verbal warranty insufficient for, 1220-1
 Rural districts, Building in, 1579
 „ Sanitary Authority, 1293
 „ „ „ with urban powers, 1293

S

Sale of Liquor to Children Act, 1494-6
 Salesman on commission, Liability of, 1312
 Sale-yard regulations, 1534-5
 Servant, Protection of, by master's warranty, 1202
 Sewer, Definition of, 1623
 Sewers, Law of, 1623 *et seq.*
 „ made for profit, 1628-30
 „ Necessary construction of, 1627
 „ owned by local authority, 1623
 „ Private, 1627-30
 „ public, Connection with, 1634
 „ Repair of, by local authority, 1623-4
 „ (Sc. burghs), 1634 *et seq.*
 „ „ belong to local authority, 1634
 Sheep-pox, Rules as to, 1537
 Sheep-scab, Rules as to, 1587
 Slaughter-house, Alteration of, 1518
 „ „ Definition of, 1517
 „ „ Diseased animals found in, 1534
 „ „ licence, 1517
 „ „ Effect of, 1519
 „ „ licence, when required, 1518
 „ „ Plan of, 1519
 „ „ Registration of, 1518
 „ „ regulations, 1518
 „ „ (Scotland) regulations in burghs, 1523
 Slaughtering cattle (Scotland) contrary to bye-laws, 1523
 Sloe gin, 1398
 Soldiers billeted on publicans, 1499-1500
 Spirits under proof, 1206
 „ Notice of watering down, 1205
 Street line (*see* BUILDING LINE)
 „ local bye-laws, 1606
 „ when a way becomes a, 1605 (*see also* NEW)
 Streets (*see also* NEW STREET, PRIVATE STREETS)
 „ continuity of buildings, indicated by, 1605
 „ Conversion of ways into, 1605
 „ Excavations in, 1651-3
 „ „ in (Scotland), 1653
 „ Law relating to, 1605 *et seq.*
 „ Paving of, 1622
 „ (Sc. burghs), liability to construct foot-pavement, 1621
 Swine, Person tending diseased, to observe precautions, 1533
 „ fever, Compensation for slaughter of swine affected by, 1532
 „ „ precautions to be observed, 1533
 „ „ Prohibition of removal of swine on suspicion of, 1538
 „ „ restriction on movement of swine, 1533

Swine fever, rules as to removal of dung, fodder, etc.,

" " ¹⁵³⁷
Slaughter of swine affected by, 1532

T

Tea (*see also* ADULTERATION)

" Adulteration of, 1281-4
" weighed with paper, 1378
Tenement house (Scotland), Rules for building, 1587
Theatre licence, 1413

Time, Calculation of, 1433
" means Greenwich time, 1484

Trade, Definition of, 1341-2
" name lawful, 1365
Traveller, *Bond-fide* (*see* LICENSING)

U

Unsound food, articles liable to seizure, 1294-7
" " Bye-laws of Corporation on, 1297
" " compensation for wrongful seizure,
1305-6, 1319
" " Condemnation in owner's absence,
1303-4
" " " of, 1303
" " " of, Owner resisting,
1304
" " defence of ignorance, 1315-16
" " "deposited in any place," meaning
of, 1299
" " exposed for sale, 1299
" " for foreign consumption, 1302
" " Inspection of, 1294
" " Inspection of premises for, 1315
" " Meat salesman liable for, 1312
" " not exposed for sale, 1311
" " not for food of man, 1301
" " notice in shop, 1317
" " Owner liable for, 1307
" " Penalties in respect of, 1320-4
" " possession of, What is, 1310-1
" " Possessor of, liable, 1310
" " Prosecution in respect of, 1307-14
" " Procedure on seizure of, 1302
" " Removal of, by inspector, 1302
" " Sale and seizure of, 1292-1324
" " (London), Defence of wholesale man,
1318
" " " Seizure of, 1313-14
" " (Scotland), defence of ignorance,
1319
" " " defence of vet.'s certifi-
cate, 1319-20
" " " Seizure of, 1314

Urban districts, Building in, 1579

Urban Sanitary Authority, Definition of powers of,
1293

Vermin killer, sold by unqualified person, 1326

W

Wages not to be paid in public-house, 1499

Walnuts, Unsound, 1313-14

Warranty as a defence, 1237-8

" Butter (*see* ADULTERATION and MARGARINE)

" by label no protection, 1197-8

" by descriptive mark no protection, 1198

" Defence in margarine prosecution by, 1260-1

" " of, when not applicable, 1201

" Express, not implied, 1193-4

" Foreign, 1202-3

" false, Prosecution for giving, 1210

" " " No time limit, 1216

" " Remedy of retailer for, 1217-25

" " Wholesale merchant and, 1212

" Forgery of, 1215

" form held sufficient, 1199

" illegally used for other goods, 1215

" Invoice not a, 1193

" Milk-, may be "running," 1270-3

" on invoice, Form of, 1196

" Running, 1200-1

" Servant protected by master's, 1202

" verbal, Remedy on, 1217

" Written, 1194

" " on invoice, 1195

Weight-ticket for coal, 1386

Weights and Measures, 1334 *et seq.*

" " Act, 1878, 1335

" " Apothecaries', when used,
1336

" " beer-barrel as a "measure,"
1343

" " Board of Trade standards,
1338-9

" " bags, articles weighed in,
1345-7

" " Bakers must provide, 1375-6

" " Brewer to keep, 1384

" " bye-laws, 1347

" " churn as a measure, 1342

" " inspector entering premises,
1352

" " False and unjust, 1343

" " Fees for testing, 1354-7

" " for use for trade, 1338

" " fraudulent use of, Penalty
for, 1348

" " heaped measure illegal, 1336

" " Hop-grower to keep, 1385

" " of illegal denomination,
Using, 1340

" " imperial standards only,
1337

" " in markets, 1385-6

" " inspector's warrant, 1353-4

" " Legal, 1340

" " liquids and dry goods, 1336

" " Making or selling false,
1348-9

" " measure, Definition of, 1342

" " metric system legal, 1355-6

" " Miller to keep, 1384

" " Offences in respect of, 1339

" " sale by bulk lawful, 1337

" " " by the bottle, 1355

" " " by the glass, 1355

" " stamped once are always
good, 1351

" " Stamping of, by inspector,
1339-1350

Weights and Measures, Standards of, 1335

"	"	"	for measuring
"	"	"	electricity and pressure,
"	"	1355	
"	"	tea weighed with paper,	
"	"	1378	
"	"	testing, Necessity for, 1339	
"	"	Troy, when used, 1336	
"	"	Unjust, 1347	
"	"	Unstamped, 1349	
"	"	"used for trade," 1341	
"	"	scales balanced with paper	
"	"	or sack, 1345-6	
"	"	scales with corrective, when	
"	"	legal, 1343-7	

Weights and Measures, scales with ball and shot			
		illegal, 1345	
"	"	weights, lead and pewter	
"	"	illegal, when, 1347	
"	"	weights, lead, casing of,	
"	"	1339	
"	"	weights, pewter, casing of,	
"	"	1339	
"	"	(See also BREAD, COAL,	
"	"	INTOXICATING LIQUOR)	
Wholesale merchant, and inspector of food and			
		drugs, 1213	
"	"	False warranty of, 1212	
"	"	Prosecution of, 1210-2	
"	"	" of, for adultera-	
"	"	tion, 1209	

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